Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1996

Lawrence Wm. Jordan,

Petitioner

v.

The Governing Board of the Marin Community College District

On Petition For Writ of Certiorari To The Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

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pro se
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QUESTIONS PRESENTED FOR REVIEW.

1. Where the Teacher Tenure Law for Community College tenured faculty states as prerequisites an evaluation "which considered the events for which dismissal or penalties may be imposed" and the recommendation of the college president, is it a denial of due process guaranteed under the Fourteenth Amendment to dismiss a tenured faculty in the absence of such evaluation?

2. Is an evaluation of teaching ability "irrelevant" to dismissal of a tenured faculty on the ground of "unfit for service"?

3. When a faculty member runs for district board, and during the election campaign the college president tells the press that said faculty member is guilty of sexual harassment without any neutral party determination or hearing, has said matter become a matter of public interest such that the faculty member's acts and conduct are protected by the First Amendment?

4. May a governing board of a community college district discipline a faculty member for acts committed outside the academic year, off district property, not involving a district program or activity, or evidencing moral turpitude?

5. Is a tenured faculty member, possessing a property and liberty interest in continuation of his public employment, denied due process when judicial review is limited to the "substantial evidence" standard?

6. Is a tenured faculty member, subject to dismissal proceedings for alleged sexual harassment of a former temporary faculty member, denied due process of law for failure of the governing board to provide him copies of all documents relied on in support of the decision to dismiss at the time of presentment of the accusation?

7. Where the state faculty tenure law provides that, in a dismissal proceeding, "*** the rights of the parties *** shall include the rights and duties of any party in a civil action brought in a superior court" and the governing board refuses and fails to make discovery to the faculty member accused, is there such a denial of due process and equal protection as to make the proceedings invalid?

8. Where a state has adopted a comprehensive statutory and regulatory scheme to deal with discrimination, including sexual harassment, in public educational institutions, which mandatory

scheme includes:

Promulgation of applicable state statutes and regulations by local districts;

Annual written notification of faculty and staff at the commencement of the academic year of the rules and regulations;

A statute of limitations;

A requirement for a written complaint;

A requirement for designation of a "responsible district officer" to handle complaints;

A specified form for the complaint;

A requirement for establishment of local informal resolution procedures as a prerequisite to filing a complaint;

A mandatory notification of the community college state chancellor of the filing of any complaint

A mandatory "impartial fact-finding investigation of that complaint" with notification to the complainant and Chancellor;

Preparation of a written report to include "at least all of the following":

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness;

c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether discrimination did or did not occur; and

(e) any other information deemed appropriate by the district;

A written administrative determination;

A proposed resolution;

A notice of right to appeal by the complainant to the district governing board and the Chancellor;

Notification to the complainant of other civil remedies (in cases involving employment discrimination the right to file a complaint with the Department of Fair Employment and Housing);

And a final report to the Chancellor;

none of which was alleged or proven by the district, is a finding of sexual harassment and dismissal not per se a violation of due process and equal protection cognizable under the Fourteenth Amendment?

9. Is dismissal of a tenured faculty member for mailing a commercial innocuous birthday card to a temporary former faculty member at her home once per year without any complaint and without any evidence from peers or students as

to the faculty member's classroom knowledge, abilities, skills, and effectiveness so arbitrary as to be invalid under the due process clause of the Fourteenth Amendment?

10. Where state law mandates annual notice to students, staff, and faculty of the nature of discrimination laws in educational institutions, the method of filing complaints and their investigation, and sets a time limit of one year from the event for filing a written complaint; and the statute states the purpose is to provide "notification"; and the governing board fails to promulgate or furnish copies of such statute and regulations, is imposition of punishment for alleged violation of such provisions without notice a violation of due process and equal protection?

11. Can a tenured community college faculty be dismissed for allegedly violating Title VII or Title IX because the collective bargaining agreement between the community college district and its faculty union contains language stating that sexual harassment is unprofessional conduct?

12. If the alleged victim of sexual harassment denies under oath any impairment of her teaching, and the district offers no evaluations or other evidence otherwise, and no evidence is introduced from other faculty or students, can there be environmental sexual harassment as a matter of law?

13. May a tenured faculty member be punished by his employer district for acts committed outside the academic year, off district property, and not during a program or activity sponsored by the employer?

14. Is refusal to furnish documents relevant to an accusation, claims of attorney-client privilege on behalf of a non client, and refusal to make discovery such a denial of due process and equal protection as to warrant reversal of a finding of unfit for service?

15. Does citation or reference to matters outside the statute of limitations or other bar to introduction, even though claimed "only as background material" violate due process and equal protection by contaminating the tribunals conclusions and findings and leaving the party adversely affected without recourse to correct or rebut?

16.Where the state Supreme Ct has declared that no cause of action lies under Govt.C. § 12940 [state version of Title VII, 42 USC § 2000e) without exhaustion of administrative remedies under the FEHA [Fair Employment and Housing Act], can

petitioner be found guilty of violation of Govt.C. § 12940 without the district or alleged complainant having first filed a complaint with FEHA without violation of due process and equal protection?

PARTIES

Lawrence Wm. Jordan, accused and petitioner.
Governing Board, accuser and respondent.
Stewart Judson, administrative law judge. [ALJ]

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ALJ Decision in In the Matter of Lawrence Wm. Jordan a Regular Academic Employee , OAH 9411146 dated June 7, 1995.

Writ of Mandate proceedings in Sacramento Superior Ct., Lawrence Jordan v. David Mertes , No. 95CS02134 and 95CS02135. (1995)

LAWRENCE WM. JORDAN v. GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT, Marin Superior Ct. No. 162915 (1995)

No. 162915 Show Cause Order dated Jan 31 1995. [CT 24]

No. 162915 Order taking Show Cause off Calendar dated February 16, 1995. [CT 27]

LAWRENCE WM. JORDAN v. STEWART A. JUDSON and THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT, Marin County Superior Ct. No. 164356, Decision on Petition for Writ of Mandate filed Nov 6, 1995.

Unpublished Opinion of First Appellate District, Division One,Court of Appeals, No. A072322, LAWRENCE W. JORDAN v. GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DIST., filed June 23, 1996.

Order Denying Reconsideration filed July 19,1996.

Order Extending Time Granting or Denying Review, filed by Supreme Court Sep 20, 1996.

Petition for review DENIED by Supreme Court filed Oct 02, 1996

BASIS OF JURISDICTION

The Order Denying Writ of Review was entered on October 02, 1996 by the California Supreme Court.

The statutory provision believed to confer jurisdiction on this court is 28 USC § 1257(a) to review the final judgment of the court of last resort of a state.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

U. S. Constitution, Art IV, Sec 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

U. S. Constitution, First Amendment: "Congress shall make no law *** abridging the freedom of speech; ***."

U. S. Constitution, Fifth Amendment: "No person shall *** be deprived of life, liberty, or property without due process of law; ***."

U. S. Constitution, Fourteenth Amendment, Sec. 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
California Education Code [Ed.C.] § 200.

Ed.C. § 210:

Ed.C. § 212

Ed.C. § 212.5

Ed.C. § 212.6:

Ed.C. § 220

Ed.C. § 230

Ed.C. § 232:

Ed.C. § 251:

Ed.C. § 261:

Ed.C. § 262.3:

Ed.C. § 70900:

Ed.C. § 70900:

Ed.C. § 70902:

Ed.C. § 76034:

Ed.C. § 81600:

Ed.C. § 87484

Ed.C. § 87485

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Ed.C. § 87622:

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Ed.C. § 87661

Ed.C. § 87663:

Ed.C. § 87664

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Ed.C. § 87667:

Ed.C. § 87669:

Ed.C. § 87671

Ed.C. 87672:

Ed.C. § 87673:

Ed.C. § 87678:

Ed.C. § 87679:

Ed.C. § 87680

Ed.C. § 87682:

Code of Civil Procedure [C.C.P.] § 1094.5

C.C.P. § 2016

C.C.P. § 2017

C.C.P. § 2019

C.C.P. § 2024.

C.C.P. § 2030.

Govt.C. § 811.6:

Govt.C. § 3543.2

Govt.C. § 11503

California Rules of Court [CRC] 317(A)

CRC 319 (a)

California Code of Regulations [CCR] title 5 § 59300:

CCR tit. 5 § 59303

CCR tit 5 § 59304:

CCR tit. 5 § 59307:

CCR tit. 5 § 59320

CCR tit. 5 § 59322

CCR tit. 5 § 59324

CCR tit. 5 § 59324

CCR tit. 5 § 59326:

CCR tit. 5 § 59328

CCR tit. 5 § 59330:

CCR tit. 5 § 59332:

CCR tit. 5 § 59338:

CCR tit. 5 § 59340

STATEMENT OF THE CASE

Petitioner was hired for the 1989-1990 academic year as a replacement engineering professor for a professor on sabbatical leave. During a staff training session that Fall, he met one Janene Gaye Frahm, a part-time speech instructor in her 40s. She agreed to go out and they went to an open house. Petitioner asked her out again, and she agreed, but after several weeks of "telephone tag" she declined. They met again at the staff Christmas dinner dance in December 1989. In June 1990, following the close of the academic year at the end of May, petitioner was offered a full-time tenure track position in engineering, which he accepted.

In late June 1991, petitioner sent Ms. Frahm a birthday card from a trip to New Zealand. She apparently complained to the district's personnel department because the card had been sent to her home address which was unlisted in the phone directory. The college vice-president [not the designated officer] sent a letter of reprimand to plaintiff claiming the sending of the card constituted sexual harassment under the collective b bargaining agreement [CBA] and that a copy of the letter would be placed in petitioner's personnel file. Petitioner sought to file a grievance through his union, but the union declined to pursue it on the grounds such materials would be removed after three years and were confidential anyway.

In the Fall of 1991, petitioner became a candidate for the governing board. During the election campaign, the college president told the press that petitioner had been found guilty of sexual harassment and such was published. Petitioner sued for invasion of privacy and defamation, but the actions were dismissed on the ground that he was a public figure.

In late June 1992 (Ms. Frahm's birthday is June 27, 1947), petitioner again sent her an innocuous commercial birthday card at home. She again complained to personnel and the vice-president ordered petitioner suspended for 4 days for violation of the CBA provisions which declare sexual harassment to be unprofessional conduct. Petitioner personally grieved the action and demanded an arbitration hearing since the CBA provided that environmental sexual harassment had to be determined by an arbitrator. The district did nothing.

In late June 1993, petitioner sent Ms. Frahm another innocuous birthday card at her home. She again complained to personnel, apparently of invasion of privacy, and the vice-president ordered petitioner suspended 10 days for violation of the CBA. Petitioner again grieved, demanded arbitration, and again nothing was

done by the district. Petitioner sued for a Writ of Mandate [No. 158373] to compel restoration of money and emoluments and to force the district to arbitrate.

In the Spring of 1991 the district had solicited applications for Teaching Resource Center Coordinator, a one year extra assignment [Ed.C. § 87484], in a foundation-funded center to provide faculty access to computers, scanners, video projectors and the like for preparation of special teaching materials. In January 1992 the vice-president again decided that petitioner was not performing to her satisfaction and ordered payroll to not pay petitioner for the Spring semester, to withhold a sum equal to the overload paid in the Fall semester, and to withhold a $4500 penalty, which was done. Again petitioner sued. [Municipal court V92-1909,]

In December 1993 the defendant governing board filed for an injunction to keep petitioner away from Ms. Frahm's office [which she did not have as a part time hire and whose location was not stated in the complaint] and to keep petitioner from sending her birthday cards or correspondence. Petitioner demurred for failure to state an injury to the governing board and for not being the real party in interest.

In January 1994 the superior court found that petitioner's suspensions for "sexual harassment" were illegal and that only the governing board had the power to punish faculty. In June the complaint for injunction was dismissed for failure to state a claim. In June petitioner sent another card to Ms. Frahm since no arbitration had been conducted, although the district had said it would. In September 1994 the district governing board, on the recommendation of the president, but without evaluation, gave notice of intention to dismiss petitioner for:

> 1. "Evident unfitness for service (Ed.C. § 87732(e)); and
> 2. "Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community college or by the governing board (Ed.C. § 87732(g))." [CT pp 42-44 for court of appeal]

The Resolution of Dismissal [CT 45] is based only on the recommendation of the president.

Petitioner filed his Notice of Objection and Demand for Hearing. [CT 47-51] Included were claims of First Amendment rights [CT 48-49] and denial of due process by failure to provide statutorily required administrative hearings before imposition of punishment [CT 49 ¶ 4], lack of specificity [Ed.C. § 87672], and

reliance on the CBA, which is not a regulation.

Under the Education Code [§ 87679, parties to a dismissal proceeding are entitled not just to the discovery available under the APA, but to the discovery available to parties in a civil action in Superior court. Petitioner filed for discovery, citing the relevant sections of C.C.P. in the headings. When no response was forthcoming, petitioner sought sanctions from the Superior court [No. 162915]. The court hearing was set for February 16, 1995. The dismissal hearing had been set for February 21, 1995. Upon appearing in court on February 16 petitioner was notified by the bailiff that the matter had been removed from the calendar as moot. Petitioner had received no discovery. The Civil Discovery Act [Appendix] provides that discovery shall be completed 30 days before trial "as a matter of right". The clerk was ordered to include the discovery court file in the appellate record but there is nothing in the court file to indicate an appearance by respondent, so why the judge held the hearing was moot is a mystery to petitioner. Under local rules, a motion to reconsider a discovery ruling must be made to the same judge, but the judge left for Turkey on February 17 and was unavailable.

At the administrative hearing, petitioner filed a motion to dismiss and a motion to postpone on the grounds of failure to make discovery, time to seek judicial review of the discovery matters, failure to allege facts necessary to the district's case, and because the district changed the place of hearing on February 16. The ALJ refused to postpone and refused to consider any challenges based upon discovery irregularities.

Following the close of the administrative hearing, the ALJ took four months to render his verdict, well beyond the 30 days allowed by law. Govt.C. § 11517(b). In spite of the time spent, the ALJ makes no mention of applicable administrative regulations.

The ALJ rendered his decision to dismiss finding that the CBA was a regulation and included the Unruh Act [C.C. § 51, fair housing]; Ed.C. § 220 [state version of Title IX, 42 U.S.C. § 2000d] and Govt.C. § 12940 [state version of Title VII, 42 U.S.C. § 2000e]. [CT 354 ¶ IX] He made no rulings the statute of limitations, overruled petitioner's claims of laches and collateral estoppel, made no response to the defenses of outside the academic year and off district property, made no ruling or finding on failure to promulgate regulations or lack of evidence that the district's alleged regulations had been approved by the Chancellor, and made no finding or ruling on the absence of a

written complaint in proper form. He was obviously unacquainted with the applicable administrative law. He also failed to note that sexual harassment in employment is vested in the Fair Employment and Housing Administration, not in the hands of employers such as district.

Petitioner filed for a Writ of Administrative Mandate under C.C.P. § 1094.5 and Ed.C. § 87682. While attempting to verify that Board Policy 5.0004 was approved by the Chancellor, as required by CCR tit. 5, § 59322, petitioner was met by silence and resistance from the Chancellor's office and had to file a Writ of Mandate proceeding in Sacramento Superior Court to compel access to public records. [Sacramento Superior Ct. Nos. 95CS02134 and 995CS02135] which revealed that Board Policy 5.0004 had never been submitted or approved; that no investigative report had been filed; and that no copy of any complaint had been filed. Petitioner then amended his petition for writ of mandate. Between the administrative hearing and the ALJ's decision, the Appellate Department of the Marin Superior Court ruled in petitioner's favor and against the district in the TRC case. [No. 160304]

In the trial court, petitioner raised his constitutional right to due process in his Petition for Writ of Mandate [CT 36 ¶ I, ¶ IV; CT 37 ¶ VI, ¶ VII] and in his Second Amended Petition for Writ of Mandate ["without or in excess of jurisdiction" CT 199 ¶ 4a; First amendment CT 200 ¶ iv; CT 203 ¶ xv; due process CT 206 ¶ x; First amendment CT 212 ¶ vi. The trial court took no evidence, weighed no evidence, and did not discuss petitioner's First Amendment claims at all. As to petitioner's due process claims, the court said:

> "The court finds petitioner's position to be persuasive that respondent did not comply fully with all of the intricacies of Title V, various regulations, and certain provisions of the Education Code. If the court is to place form over substance, petitioner might prevail in his technical arguments-
>
> At the trial level, this court finds substance to prevail over form. The lack of technical compliance with all of the provisions of the Education Code and other regulations subsequently ferreted out by petitioner do not give a basis for his writ of mandate. This is especially true when the court considers the particular choice of procedure taken by respondent.
> The court finds that petitioner was afforded due process, was fully aware of the charges and received a fair hearing.

There was substantial evidence to support the charges that justified petitioner's dismissal."

Noting that these are conclusions reached without a trial as mandated by C.C.P. § 1094.5(c) and (e); Ed.C. § 87682, petitioner filed an appeal.

What "choice of procedure" the trial court means is unknown. To petitioner's mind, the state has specified the way sexual harassment claims are to be handled, and what the district did was not the specified procedure.

In the court of appeals, petitioner raised his federal rights to due process and First amendment speech and association in his opening brief [pp. 10-15]
In his reply brief, petitioner again raised the issue of denial of his federal rights under the fourteenth amendment [pp. 1, 3-10, 12].
In his petition for rehearing, petitioner raised the issue of denial of his federal rights under fourteenth amendment and the arbitrariness of the punishment [pp 17-18].
Both the ALJ and the Court of Appeals found petitioner to be guilty of sexual harassment under Govt.C. § 12940.
In his Petition for Writ of Review to the California Supreme Court, petitioner raised the issues of denial of federal rights

ARGUMENT

LACK OF DUE PROCESS

Petitioner was a tenured public college faculty. As such he has a property interest in continued employment,, recognized under the 14th Amendment as a liberty interest protected by due process. Board of Regents of State Colleges v. Roth (1972) 408 U.S. 564; 33 L.Ed.2d 548, 92 S.Ct. 2701. Tenured faculty, such as petitioner, have a state-created property interest in continued public employment. Temporary faculty, such as Janene G. Frahm, have no property interest and are terminated annually or by semester and must be rehired. Daniels v. Shasta-Tehama-Trinity J. Community College Dist. (1989) 212 Cal.App.3d 909; 260 Cal.Rptr. 867. The Daniels case also refutes the ALJ's finding that the CBA was a regulation. [CT 63 ¶ XIII]

Janene G. Frahm was not an employee after the summer of 1993. [Adm. Hrg. EX 3; ALJ finding VI (CT 53)]. The Court of Appeal determination that she was employed until the end of calendar 1994 is clearly erroneous, unsubstantiated by anything in the record, and appears designed to escape petitioner's argument that the proceedings were time barred by CCR tit. 5 § 59328(a)(4).

California has held that Government Code section 12940 is analogous to federal title VII (42 U.S.C. § 2000e), and is evaluated under federal law interpreting title VII cases. University of Southern California v. Superior Court (1990) 222 Cal.App.3d 1028, 1035; 272 Cal.Rptr. 264. Title VII liability attaches only to the plaintiff's employer. Garcia v. Elf Atochem North America (5th Cir. 1994) 28 F.3d 446. Title VII liability does not attach to individuals acting in their individual capacity. Garcia fn 2 citing Grant v. Lone Star Co. (5th Cir. 1994) 21 F.3d 649.

In Rojo v. Kliger (1990) 52 Cal.3d 65, 71; 276 Cal.Rptr. 130, 801 P.2d 373, the California Supreme Ct. held that plaintiff's were not barred by the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) from pursuing state law claims, such as tortious discharge in violation of public policy, but they were barred from stating a cause of action under section 12940 "because they did not exhaust their administrative remedies under the Act." Neither Frahm nor respondent district alleged nor offered evidence of having exhausted their administrative remedies under the state Act.

Since petitioner is at most a co-worker, more correctly an individual acting in his individual capacity and since respondent did not exhaust its administrative remedies, if any, petitioner was denied due process of law under the fourteenth amendment.

Under the Administrative Mandate procedure for reviewing administrative decisions, C.C.P. § 1094.5, the trial court was required to reverse if the respondents had not proceeded in the manner provided by law. This is nothing but another way of saying without due process of law. Ed.C. § 87682 specifically requires the reviewing court "shall exercise its independent judgment on the evidence" and C.C.P. § 1094.5(c) requires:

> "**** in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." [emphasis added]

The trial court's decision [CT 387] is totally devoid of any indication that it weighed the evidence. It does not indicate what kind of evidence it found most reliable, or what testimony it found most credible or incredible. The mandate procedure authorizes the trial court to "hear" the case sitting without a jury [C.C.P. § 1094.5(a)]. It also authorizes the court to admit

evidence improperly excluded and "admit the evidence at the hearing on the writ ***." [C.C.P. § 1094.5(e)] Petitioner petitioned the trial court for redress of his discovery rights which had been ignored, thus not proceeding in the manner provided by law [CT 38], but the trial court did nothing and took no evidence at trial.

Petitioner also raised the defense that the conduct with which he was charged took place outside the academic year and therefor was not subject to discipline. Ed.C. § 87666. In D.T. by M.T. v. Independent School Dist. No. 16 (10th Cir. 1990) 894 F.2d 1176, the court found the district and its executive officers not liable for sexual molestation of some young male students by a basketball coach because the acts took place during the summer school break and off district property. The court noted that the district has no control over teachers outside the academic year. The same should prevail here under principles of equal protection.

That process which was due in this dismissal proceeding included at least the following:

1. Clear and precise notice of the charges;
2. A competent tribunal with authority to adjudicate the claims;
3. A competent ALJ, since dismissal of tenured faculty is a penal act requiring strict adherence to the law, and if criminals can have new hearings based upon inadequate representation by counsel, persons being deprived of their professional careers deserve a competent tribunal;
4. Notice of the applicable statutes and regulations relevant to the matter;
5. Absence of fraud by opposing counsel to mislead the ALJ;
6. Copies of all materials upon which the charges are based to be furnished at the time the accusation is served;
7. A record demonstrating that the tribunal has the authority to adjudicate in the matter since the ALJ derives his/her authority from the governing board and, as a local agency of only granted powers, they must show on the record that they are authorized and are proceeding in the manner specified by the Legislature;
8. Discovery as specified in the statutes.

The Chancellor's regulations on sexual harassment, by statute [Ed.C. §§ 212.6, 232, 261]; and regulation [CCR tit. 5 §§ 59322, 59326] are to be furnished to each faculty member each year. This was not done, was repeatedly grieved by petitioner, and

thus denied petitioner the notice required by due process and Ed.C. § 212.6(a).

Notice of the chancellor's regulations was not given to petitioner or to the governing board or to the ALJ. Although counsel for the governing board practice under the name "School and College Legal Services", they were either ignorant of mandatory regulations or actively concealed them from petitioner, the ALJ, and the courts.

By statute, Ed.C. § 261, the provisions of Ch. 2 on Sex Discrimination

> "shall be implemented pursuant to existing regulations- and procedures promulgated pursuant to Section 11138 of the Government Code, govern- the filing and handling of written complaints of prohibited discrimination."

This statute dates from 1982. Board Policy 5.0004 was not in existence in 1982 and the board cannot promulgate regulations pursuant to the Government Code because it is not a state agency. The CBA was adopted in 1989, so it cannot qualify as an "existing regulation", nor does it meet the criteria of regulation set forth in Govt.C. § 811.6. [See App.]

Both Ed.C. § 261 and Board of Governors regulation, CCR tit. 5 § 59328, expressly require all complaints of prohibited discrimination to be initiated by the filing of a written complaint. The absence of such written complaint deprives the governing board and ALJ of any legitimate claim to adjudicate sexual harassment.

If a proper sexual harassment complaint is filed, the responsible district officer [never identified in these proceedings], is to conduct an impartial fact-finding investigation [CCR tit. 5 § 59334] leading to a written report and an administrative determination. CCR tit. 5 § 59336. The absence of such report deprived petitioner of due process by denying him access to relevant facts, including witness statements, dates, places, etc

As a local agency possessing only granted powers, the district must proceed in the manner provided by the Legislature or its acts are void. Cowell v. Martin (No authority is given local boards to try faculty, staff or students for sexual harassment. The Chancellor's office

> "shall have the responsibility for monitoring the compliance

of each district with any and all regulations promulgated-
pursuant to Section 11138 of the Government Code."

Not the district. Not the ALJ.

Where statute and/or regulation have prescribed the mode of exercise of a power, the mode is the measure of the power. Ed.C. §§ 87666, 87667, 87671. El Camino Community College District v. Superior Court (1985) 173 Cal.App.3d 606; 219 Cal.Rptr.236. Any other manner of proceeding is arbitrary and therefor a violation of due process.

Under Ed.C. § 220, the prohibition on sexual discrimination extends only to a

"program or activity conducted by an educational institution-
tion which receives or benefits from state financial assistance-
or enrolls students who receive state student financial-
aid."

Since petitioner is not an educational institution and does not enroll students, he, like private educational institutions, may discriminate without running afoul of this section.

For an inferior tribunal, jurisdiction is never assumed, but must be justified on the record. Abelleira v. District Court of Appeal (1941) 17 C.2d 280, 290; Stuck v Board of Medical Examiners (1949) 94 C.A.2d 751; 211 P.2d 389 This was not done. No citation of subject matter jurisdiction is stated or proven. The ALJ apparently assumed he could exercise judicial jurisdiction in an administrative context, but all the cases he cites in his decision with respect to sexual harassment arise out of judicial contexts and not administrative. For such inferior tribunals, all prerequisites must be met to proceed to decide. The essential prerequisites for a community college governing board are found in Ed.C. §§ 87600 and 87660. Reliance on the CBA is per se unlawful since Ed.C. § 87485 expressly denies the governing board (and derivatively the ALJ) any authority to waive by contract any benefits of "this chapter or any part thereof ***." One of the benefits of "this chapter" is that the "grounds set forth in Section 87732 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article. [see Ed.C. § 87663]
(b) The governing board has received all statements of evaluation which considered the events for which dismiss-

dismissal or penalties may be imposed. [It seems self-evident
that an evaluation by peer faculty and students in
Spring 1993 cannot have considered events outside
the academic year or during June 1993 or June 1994.]
(c) The district governing board has received recommend-
recommendations of the superintendent of the district and if the
employee is working for a community college, the recommendations-
of the president of that community college.
(d) The district governing board has considered the state-
of evaluation and the recommendations in a lawful
meeting of the board."

There is no evidence in the record that such an evaluation was performed and thus a prerequisite to dismissal jurisdiction has not been met and the governing board had no jurisdiction to dismiss or penalize petitioner. Due process requires that the tribunal have subject matter jurisdiction. The Court of Appeals opinion states that the board may have considered the 1993 evaluation, but it was favorable, long before the hearing and charges, and the court unconstitutionally shifts the burden of proof to petitioner to show why the 1993 evaluation was admitted.

California has indicated its concern about teachers being subjected to stresses for saying unpopular things. In Koons v. Placer Hills Union Sch. Dist. (1976) 61 C.A.3d 484; 132 Cal.Rptr. 243 it was said that school employees are entitled to have statutory procedures for dismissal strictly followed and fairly considered. The trial court treated this like a land sale gone wrong and thought close was near enough. Not so when it is constitutional facts in the balance.

The ALJ cites the CBA as "incorporating" sexual harassment laws, but the CBA section relied upon relates to "professional conduct". Petitioner was not charged with "unprofessional conduct", Ed.C. § 8772322(a), and due process mandates fair notice of the charges to be met.

Due process also requires a "nexus" between the conduct complained of and a showing that such conduct is detrimental to the public in order to deprive someone from practicing a legal profession. Board of Education v. Jack M. (1977) 19 C.3d 691; 139 Cal.Rptr. 700, 566 P.2d 602. [Solicitation in public restroom to commit homosexual act does not demonstrate an unfitness to teach.

The leading case in California is Morrison v. State Board of Education (1969) 1 C.3d 214; 82 Cal.Rptr. 175, 461 P.2d 375. In that case, also involving homosexual acts by a teacher, the court held that such conduct did not automatically disqualify someone from teaching, but that a "nexus" must be shown between the conduct in question and "unfitness to teach". The conduct must indicate inadequate future classroom performance and a harmful impact on students. The court gave a list of factors to be considered which are recited in petitioner's Statement of Objection to the Accusation [CT 114] and in the ALJ's Decision. [CT 63 et seq.] The California courts have since applied the same criteria to a number of other occupations:

Baker v. State Bar (1989) 49 Cal.3d 804; 263 Cal.Rptr. 798, 781 P.2d 1344.. [Attorney malfeasance due to alcohol and cocaine addiction. Moral turpitude must be given meaning and content relevant to fitness to practice.

Bevli v. Brisco (1985) 165 Cal.App.3d 812; 212 Cal.Rptr. 36. Unfitness to teach charges based on peer evaluations and student complaints. Morrison says look at future classroom performance and the overall impact on students.

Bevli v . Brisco (1989) 211 Cal.App.3d 986; 260 Cal.Rptr. 57. "Morrison" standards must be analyzed in all cases of teacher discharge.

Cartwright v. Board of Chiropractic Examiners (1976) 16 C.3d 762; 129 Cal.Rptr. 462, 548 P.2d 1134. House of prostitution run by chiropractor. Cite Morrison. The power to regulate a profession cannot be used arbitrarily to penalize conduct having no demonstrable bearing upon fitness for its practice.

Accord, In re Kelley (1990) 52 Cal.3d 487; 276 Cal.Rptr. 375, 801 P.2d Attorney with alcohol problem. Offenses that do not involve moral turpitude or affect professional performance should not be the basis for professional discipline simply because they fall short of the highest standards of professional ethics.

The ALJ simply failed to apply the law and evidence to the Morrison tests and arrived at an erroneous decision not supported by facts and contrary to the law. As noted by the court in Fontana Unified School Dist. v. Burman (1988) 45 Cal.3d 208; 246 Cal.Rptr. 733, 753 P.2d 689, the Legislature has amended the Ed.C. twice since Morrison was decided and has adopted the Morrison holdings.

In Capitol City Foods, Inc. v. Superior Court (1992) 5 Cal.App.4th 1042; 7 Cal.Rptr.2d 418, a teenage worker at a hamburger restaurant was raped by her supervisor after

accompanying him to his home after a date made at work. She sued under Govt.C. § 12940. The court stated that respondeat superior is an element of a prima facie case of environmental sexual harassment. The acts complained of must happen in the workplace or in a work-related context. A nexus must be demonstrated showing the conduct was in some fashion work-related. Things done for personal reasons are not within the statutory prohibition.

California courts have held that administrative due process requires that the accused be furnished documents upon which the accusation is based with the accusation. Skelly v. State Personnel Bd. (1975) 15 C.3d 194; 124 Cal.Rptr. 14, 539 P2d 774. Also, the agency must show an adverse effect on the public of retention of the employee. Citing Arnett v. Kennedy (1974) 416 U.S. 134; 40 L.Ed.2d 15, 94 S.Ct. 1633. Accord, Pipkin v Board of Supervisors (1978) 82 Cal.App.3d 652; 147 Cal.Rptr. 502.
Unfitness to teach must be proven by evidence, usually testimonial by experts in education. West Valley-Mission Community College Dist. v. Concepcion (1993) 16 Cal.App.4th 1776; 21 Cal.Rptr.2d 5; Comings v. State Bd. of Education (1972) 23 C.A.3d 94, 104; 100 Cal.Rptr. 73. The ALJ's decision is unsupported by any evidence relating to teaching--no faculty, no students. There is also no evidence that Janene Frahm is a reasonable woman. Again, testimony of peers and students, and evaluations are necessary. The failure of the district to introduce her evaluations must be taken as evidence they do not show any adverse effect on her job performance.

The ALJ cites [CT 56 ¶ XIX] "She observed him staring at her during meetings which made her feel uncomfortable." Staring at someone in a public place is not sexual harassment. Bougher v. University of Pittsburgh (3rd Cir. 1989) 882 F.2d 74. The Bougher court also indicated that if the proceeding before it were from an administrative hearing, it would adopt the administrative statute of limitations.

Downes v. F.A.A. (D.C. Cir. 1985) 775 F.2d 288 says when an agency brings a charge of sexual harassment against one of its employees, it is held to the same standard as an individual and part of its case is to develop the record. The district did not show that state regulations had been promulgated, that petitioner knew of said regulations, that faculty and staff and students knew where and how to report incidents, that district followed the applicable law and arrived at its decision as a result of impartial investigation and evaluation of petitioner's classroom conduct. How did petitioner's mailing of the cards relate to his

fitness to teach?

The ALJ dismissed petitioner's claim of violation of his First Amendment rights out of hand. But the district made the issue of petitioner's sexual harassment of Ms. Frahm one of public interest by unauthorized release of confidential material from his personnel file. Thus the standard for regulating his speech is much stricter. Since none of it took place on district property or during the academic year, district had no legitimate interest in trying to regulate of prevent it. The cards and subsequent demand for arbitration were political speech to move the district's failure to follow its own alleged rules or the state rules into the consciousness of the faculty and students.

Since the district refused to distribute regulations as required by statute; refused arbitration; refused to alter its conduct after several lawsuits it lost; petitioner was left with little else to force the district to comply. But he didn't count on concealment by the district's attorneys, ignorance of administrative law by the ALJ, and bias by the Chancellor's office in refusing public records or pursuing its own monitoring duties.

BASIS FOR JURISDICTION IN THIS COURT

28 USC § 1257 to review the final judgment of the court of last resort of a state--the denial of a Writ of Review dated October 02, 1996 by the California Supreme Court.

APPENDIX

CONSTITUTIONAL PROVISIONS

U. S. Constitution, Art IV, Sec 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

U. S. Constitution, First Amendment: "Congress shall make no law *** abridging the freedom of speech; ***."

U. S. Constitution, Fifth Amendment: "No person shall *** be deprived of life, liberty, or property without due process of law; ***."

U. S. Constitution, Fourteenth Amendment, Sec. 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

California Education Code [Ed.C.] § 200. It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

Ed.C. § 210: For purposes of this chapter, "educational institution" means a public or private preschool elementary, or secondary school or institution; a public or private institution of vocational, professional, or postsecondary education; the governing board of a school district; the governing board of a community college district; the Regents of the University of California; the Trustees of the California State University, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

Ed.C. § 212: For purposes of this chapter, "sex" means the biological condition or quality of being a male or female human being.

Ed.C. § 212.5: For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis of any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Ed.C. § 212.6: (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies ***.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Ed.C. § 220: No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

Ed.C. § 230: For purposes of this chapter, harassment and other discrimination on the basis of sex include, but are not limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in any academic, extracurricular, research, occupational training, or other program or activity.

Ed.C. § 232: The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue regulations pursuant to Chapter 3.5 (commencing with Section 11340) and Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, commonly referred to as the

Administrative Procedure Act, to implement the provisions of this chapter.

Ed.C. § 251: A school district or community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

Ed.C. § 261: The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

Ed.C. § 262.3: (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, or the president of a campus of the California State University, pursuant to this article, to the State Department of Education, the Board of Governors of the California Community Colleges, or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall b e advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

Ed.C. § 70900: There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

Ed.C. § 70901: (a) The Board of Governors of the California Community Colleges shall provide leadership and direction to the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and

continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges. *****

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

Ed.C. § 70902: (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

*** (6) Manage and control district property.

Ed.C. § 76034: No student shall be removed, suspended, or expelled unless the conduct for which the student is disciplined is related to college activity or college attendance.

Ed.C. § 81600: The governing board of a community college district shall manage and control school property within its district.

Ed.C. § 87484(a): In the event a regular employee of a community college district has tenure as a full-time regular employee of the district, any assignment or employment of such employee in addition to his or her full-time regular assignment may be terminated by the governing board of the district at any time.

Ed.C. § 87485: Except as provided in Section 87744, any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter [Ch 3 "Employment"] or any part thereof is null and void.

Ed.C. § 87600: The provisions of this article govern the employment of persons by a district to serve in faculty positions and establish certain rights for these employees. Other provisions of the law which govern the employment of community college faculty or establish rights and responsibilities for these persons shall be applied to persons employed by community college districts in a manner consistent with the provisions of this article.

Ed.C. § 87620: The provisions of this article apply to all persons employed as faculty members by a community college district.

Ed.C. § 87622: The employment rights, responsibilities, dismissal, imposition of penalties for persons employed by a community college district in faculty positions shall b e governed by the provisions of Article 2 (commencing with Section 87600), and Article 4 (commencing with Section 87660) of this chapter. The employment of faculty by a community college district shall otherwise be governed as provided by law and in a manner consistent with the provisions of Articles 2 and 4 and with the provisions of this article (hereinafter referred to in this article, collectively, as "this act").

*****

The provisions of this act shall take precedence, for the purposes of community college faculty, over any other act enacted by the Legislature at any session which, explicitly or implicitly would result in a community college faculty being governed by provisions inconsistent with the provisions of this act.

The provisions of this article govern the evaluation of, the dismissal of, and the imposition of penalties on, community college faculty. Other provisions of this code which govern the evaluation of, dismissal of, and the imposition of penalties on, community college faculty shall be applied to persons employed by a community college district in a manner consistent with the provisions of this article.

: (b) "District" means a community college district.

(c) "Regular employee" or "tenured employee" means an employee of a district who is employed in accordance- with subdivision (c) of Section 87608, subdivision- (c) of Section 87608, or Section 87609.

(d) "Academic year" means that period between the first day of a fall semester or quarter and the last day of the following spring semester or quarter.

Ed.C. § 87663: (b) Whenever an evaluation is required of a faculty member by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d)The peer review process shall be on a departmental or divisional basis and shall address the forthcoming demographics of California and the principles of affirmative action. ***

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process. ***

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

Ed.C. § 87664: The governing board of each district, in consultation with the faculty, shall adopt rules and regulations establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its faculty to meet in the performance of their duties. Such procedures and standards shall be uniform for all contract employees of the district with similar general duties and responsibilities and shall be uniform for all regular employees of the district with similar general duties and responsibilities.

Ed.C. § 87666: During the school year, all contract and regular employees are subject to dismissal and the imposition of penalties on the grounds and pursuant to procedures set forth in

this article.

Ed.C. § 87667: A contract or regular employee may be dismissed or penalized for one or more of the grounds set forth in Section 87732.

Ed.C. § 87669: The governing board shall determine whether a contract or regular employee is to be dismissed or penalized. If the employee is to be penalized, the governing board shall determined the nature of those penalties. If the employee is to be dismissed or penalized, the governing board shall determine whether the decision shall be imposed immediately or postponed in accordance with Section 87672.

Ed.C. § 87671: A contract or regular employee may be dismissed or penalized if one or more of the grounds set forth in Section 87732 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article.

(b) The governing board has received all statements of evaluation which considered the events for which dismissal or penalties may be imposed.

(c) The governing board has received recommendations of the superintendent of the district and, if the employee is working for a community college, the recommendations of the president of that community college.

(d) The district governing board has considered the statements of evaluation and the recommendation in a lawful meeting of the board.

Ed.C. 87672: If a governing board decides it intends to dismiss or penalize a contract or regular employee, it shall deliver a written statement, duly signed and verified, to the employee setting forth the complete and precise decision of the governing board and the reasons therefor.
The written statement shall be delivered by serving it personally on the employee or by mailing it by United States registered mail to the employee at his address last known to the district. ***

Ed.C. § 87673: If the employee objects to the decision of the governing board or the reasons therefor on any ground, he shall notify in writing the governing board, the superintendent of the district which employs him, and the president of the college at which he serves of his objection within 30 days of the date of the service of the notice.

Ed.C. § 87678: If within 30 days of the receipt of the notification

by the district governing board, no written confirmation of agreement of the employee and the governing board as to an arbitrator has been submitted to the secretary of the governing board for entry into its records, the governing board shall certify the matter to the Office of Administrative Hearings and request the appointment of an administrative law judge.

Ed.C. § 87679: The administrative law judge shall conduct proceedings in accordance with Chapter 3 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party as in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

Ed.C. § 87680: The administrative law judge shall determine whether there is cause to dismiss or penalize the employee. If he or she finds cause, he or she shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and shall determine whether his or her decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No evidence shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

Ed.C. § 87682: The decision of the arbitrator or administrative law judge, as the case may be, may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by an administrative law judge under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the

same character and matters as to which special precedence is given by law.

Ed.C. § 87732: No regular employee shall be dismissed except for one or more of the following causes:

(a) Immoral or unprofessional conduct.

(b) Any violation of Article 4 (commending with Section 11400) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) Dishonesty.

(d) Incompetency.

(e) Evident unfitness for service.

(f) Physical or mental condition which make him or her unfit to instruct or associate with students.

(g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations proscribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.

(h) Conviction of a felony or of any crime involving moral turpitude.

(i) Conduct specified in Section 1028 of the Government Code.

Code of Civil Procedure [C.C.P.] § 1094.5 [Administrative Mandate]: (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with the respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. ***

(b) The inquiry in such a case shall extend to tne questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of

discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. ***

(e) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ.s Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

C.C.P. § 2016: (a) This article may be cited as the Civil Discovery Act of 1986.
(b) As used in this article:

(1) "Action" includes a civil action and a special proceeding of a civil nature.

(2) "Court" means the trial court in which the action is pending, unless otherwise specified.

(3) "Document" and "writing" mean a writing as defined in Section 250 of the Evidence Code. *****

C.C.P. § 2017: (a) Unless otherwise limited by order of the court in accordance with this article, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim of defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property. *****
(c) The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery

clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion. *****
(d) In any civil action *** alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning the plaintiff's sexual conduct with individuals other than the alleged perpetrator is required to establish specific facts showing good cause for that discovery, and that the matter sought to be discovered is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence. This showing shall be made by noticed motion and shall not be made or considered by the court at an ex parte hearing. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.

C.C.P. § 2019. (a) Any party may obtain discovery by one or more of the following methods:

(1) Oral and written depositions.
(2) Interrogatories to a party.
(3) Inspections of documents, things, and places.
(4) Physical and mental examinations.
(5) Requests for admissions.
(6) Simultaneous exchanges of expert trial witness information.

(b) The court shall restrict the frequency or extent of use of these discovery methods if it determines either of the following:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

(2) The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation. *****
(c) Unless there is a rule of the Judicial Council, or a local court rule or local uniform written policy to the contrary the methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or another method, shall not operate to delay the discovery of any other party. However, on motion and for good cause shown, the court may establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice.

***** (e) *** Section 1013 *** shall be applicable to any *** method *** of discovery or service of a motion for discovery provided for in this article.

C.C.P. § 2024. (a) Except as otherwise provided in this section, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action. As used in this section, discovery is considered completed on the day a response is due or on the day a deposition begins. Except as provided in subdivision (e), a continuance or postponement of the trial date does not operate to reopen discovery proceedings.

C.C.P. § 2030. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by propounding to any other party to the action written interrogatories to be answered under oath.

Govt.C. § 811.6: "Regulation" means a rule, regulation, order or standard, having the force of law, adopted by an employee or agency of the United States or of a public entity vested by constitution, statute, charter or ordinance in such employee or agency to implement, interpret, or make specific the law enforced or administered by the employee or agency.

Govt.C. § 3543.2. (b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

Govt.C. § 11503. A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the

proceeding is to be held. The verification may be on information and belief.

California Rules of Court [CRC] 317.(a) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days, all papers opposing the motion at least five court days, and all reply papers at least two court days before the time appointed for the hearing. *****

CRC 319 (a) Unless otherwise provided by local rule, all papers relating to a law and motion proceeding shall be filed in the clerk's office.

California Code of Regulations [CCR] title 5 § 59300: The purpose of this chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5 as added by Chapter 972 of the Statutes of 1977, to the end that no person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability, be unlawfully subject to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges. [Filed 4-17-81; effective thirtieth day thereafter]

CCR tit. 5 § 59303: The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor, except as specifically stated in this chapter.

CCR tit 5 § 59304: It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

CCR tit. 5 § 59307: The governing board of each community college district shall ensure that all persons, regardless of their sex, are afforded equal rights and opportunities in programs and activities conducted by colleges in the district. The district shall comply with all requirements of Chapter 2 (commencing with Section 200) of Division 1 of Title 1 of the Education Code, which is commonly referred to as the Sex Equity in Education Act. Complaints alleging sexual harassment or discrimination on

the basis of gender prohibited by that Act shall be filed and investigated pursuant to the procedures set forth in this subchapter.

CCR tit. 5 § 59320: Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.

CCR tit. 5 § 59322: Each community college district, no later than 90 days from the operative date of this chapter [1981] shall adopt and submit to the Chancellor for approval rules and regulations consistent with this article for investigation and resolution of complaints of unlawful discrimination.

CCR tit. 5 § 59324: Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations of the complaint.

CCR tit. 5 § 59326: Each community college district shall notify students and employees of the provisions of this chapter.

CCR tit. 5 § 59328: (a) An investigation of alleged unlawful discrimination prohibited by this Subchapter will be initiated by filing a complaint which meets the following requirements:

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(2) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to Section 59324 by the appropriate community college district.

(3) The complaint shall be in a form prescribed by the Chancellor.

(4) The complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(b) Districts shall establish procedures for attempting to resolve charges of unlawful discrimination which shall be a prerequisite to filing a complaint pursuant to this chapter. Such procedures shall be limited to thirty (30) days.

CCR tit. 5 § 59330: Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall notify the Chancellor of the complaint in a form and manner determined by the Chancellor.

CCR tit. 5 § 59332: When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

CCR tit. 5 § 59334: Upon receiving a complaint which is properly filed in accordance with Section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report which shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;
(b) a summary of the testimony provided by each wit-witness, including the complainant and any witnesses identified by the complainant in the complaint;
(c) an analysis of any relevant data or other evidence collected during the course of the investigation;
(d) a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint; and
(e) any other information deemed appropriate by the district .

CCR tit. 5 § 59336: Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward all of the following to the complainant:

(a) a copy or summary of the investigative report re required pursuant to Section 59334;
(b) a written notice setting forth:
(1) the determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint;
(2) a description of actions taken, if any, to prevent similar problems from occurring in the future;
(3) the proposed resolution o the complaint; and

(4) the complainant's right to appeal to the district governing board and the Chancellor pursuant to Section 59338.

CCR tit. 5 § 59338: (a) If the complainant is not satisfied with the results of the administrative determination pursuant to Section 59336, the complainant may, within fifteen (15) days, submit a written appeals to the district governing board. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his or her right to appeal this decision pursuant to this section. If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter.

(b) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with Section 59350) of this subchapter.

(c) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing. In addition, in such cases, the complainant may file a petition for review with the Chancellor within thirty (30) days after the governing board issue the final district decision or permits the administrative determination to become final pursuant to subsection (a). The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept the case, he/she may:

(1) attempt to informally resolve the matter pursuant to Section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of Subchapter 1 (commencing with Section 53000) of Chapter 4 of this Division; or

(3) take any other action deemed appropriate by the Chancellor.

CCR tit. 5 § 59340: Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) the original complaint;

(b) the report required pursuant to Section 59334 describing the nature and extent of the investigation conducted by the district;

(c) a copy of the notice sent to the complainant pursuant to Section 59336(b);

(d) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to Section 59338(a);

(e) a copy of the notice to the complainant required pursuant to Section 59338(a); and

(f) such other information as the Chancellor may require.

Supreme Court, U.S.
FILED

961221 DEC 3 1 1996

OFFICE OF THE CLERK
No.

IN THE

Supreme Court of the United States

October Term, 1996

Lawrence Wm. Jordan,

Petitioner

v.

The Governing Board of the Marin Community College District

On Petition For Writ of Certiorari To The Supreme Court of California

PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL APPENDIX

Lawrence Wm. Jordan,
pro se
202 Kent Ave. # 8
Kentfield, CA 94904
(415) 461-0912

43 pp

SUPPLEMENTAL APPENDIX

OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW ENTERED IN CONJUNCTION WITH JUDGMENT SOUGHT TO BE REVIEWED

NOTICE OF DECISION TO DISMISS [CT 242; Admin Hrg Ex 1] Dated September 8, 1994

Dear Mr. Jordan:

On September 8, 1994, the Governing Board of the Marin Community College District took action to dismiss you.

The Governing Board received a recommendation from the Superintendent/President of the District that it issue you a Statement of Decision to Dismiss and Statement of Charges. The Board found that there was cause for your dismissal as an academic employee of the District, as more particularly set out in the Statement of Decision to Dismiss and the Statement of Charges.

Enclosed are the following:

1. A copy of the Statement of Decision to Dismiss and the Statement of Charges, and all attachments thereto;

2. Copies of Education Code Sections 87666-87684, 87732, and Government Code Sections 11500, 11506, 11507.5, 11507.6, 11507.7.

You are notified that you are dismissed from employment with the District effective 30 days after the date of this letter. However, should you request a hearing you will remain in paid status until a final decision is reached following the hearing. You have a right to file a written objection to the decision of the Governing Board, or the reasons therefor, which is to be delivered to said Board within thirty (30) days after this Notice and the Enclosed Statement of Dismissal is mailed to you. You may, but need not, be represented by counsel at any or all stages of these proceedings.

Your failure to request a hearing by filing a written objection within the period specified above will constitute a waiver of your right to a hearing.

You are also notified that you may request a hearing,

and the discovery authorized by Code Section 11507.6 and Education Code Sections 87675 and/or 87679 shall be available upon request by notifying the Superintendent/President in writing at the following address:

Dr. James E. Middleton
Superintendent/President
Marin Community College District
885 College Avenue
Kentfield, CA 94904

Sincerely,

s/

James E. Middleton
Superintendent/President

[CT 244]

GOVERNING BOARD OF THE
MARIN COMMUNITY COLLEGE DISTRICT

In the Matter of)
)
Lawrence Wm. Jordan)
a Regular Academic Employee)
_____)

STATEMENT OF DECISION TO DISMISS

I, James E. Middleton, Superintendent/President of the Marin Community College District, County of Marin, State of California, pursuant to the provisions of Education Code Section 87666 et seq., made a recommendation on September 8, 1994, to the Governing Board of said District that the Board take action to dismiss Lawrence Wm. Jordan, a regular academic employee of said District, and to notify Lawrence Wm. Jordan of its decision to dismiss him.

The grounds upon which this Statement of Decision to Dismiss are based are evident unfitness for service, persistent violation of or refusal to obey the school laws of the State or regulations of the board. The grounds are based specifically on the Statement of Charges, attached hereto and incorporated herein by reference thereto.

The instances of conduct contained in the Statement of

Charges, have caused disruption of the orderly administration of the community college and will negatively impact the education offered in the District.

On the basis of the foregoing, the Board of trustees has authorized that Lawrence Wm. Jordan be served with the Statement of Decision to Dismiss and Statement of Charges.

DATED: September 8, 1994.

s/ _____
Dr. James E. Middleton
Superintendent/President

[CT 246]

DECLARATION

I hereby declare under penalty of perjury that I have read the foregoing Statement of Decision to Dismiss and Statement of Charges, and am familiar with the contents thereof, and that said contents are true and correct to the best of my knowledge and belief.

Executed this 8th day of September, 1994, at Kentfield, California, County of Marin.

s/ _____
Dr. James E. Middleton

[CT 249]

BEFORE THE GOVERNING BOARD OF THE
MARIN COMMUNITY COLLEGE DISTRICT

In the Matter of)
)
Lawrence Wm. Jordan,)
a Regular Academic Employee)
_____)

STATEMENT OF CHARGES

I, James E. Middleton, Superintendent/President of the Marin Community College District charge that there exists cause to dismiss Lawrence Wm. Jordan as a permanent academic employee of the Marin Community College District for the

following reasons:

A. Evident unfitness for service (Education Code § 87732(e)); and

B. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community college [or, JEM] by the governing board. (Education Code § 87732(g)).

These grounds are supported by the following specific acts or omissions:

1. During the Fall 1989 semester you met Ms. Janene Frahm. At the time, Ms. Frahm was a part-time academic employee of the Marin Community College District (the College). Ms. Frahm's status with the College is that of an Eligible Temporary Credit Unit Member (ETCUM) instructor who through the collective bargaining agreement between the College and the United professors of Marin has the first right of assignment as an instructor when a position is open in her discipline, which is Communications.

2. After meeting Ms. Frahm in the Fall of 1989, you obtained her telephone number and contacted her. You and she agreed to attend an open house party. After that occasion, Ms. Frahm indicated she did not wish to see you again and asked you to stay away from her.

3. In April 1990, you wrote the University of Kansas alumni office seeking personal information about Ms. Frahm. The University informed Ms. Frahm of your request and she contacted you in order to express her dissatisfaction about this invasion of privacy.

4. As a result of this episode, Ms. Frahm contacted the College administration and complained of your behavior. In the Spring of 1990, you were verbally instructed by Mr. Lowney to leave Ms. Frahm alone and not to contact her again.

5. During the summer Summer session of 1990, you attempted to enroll in a Communications class taught by Ms. Frahm.

6. In June 1990, and for each subsequent June including June, 1994, you have sent Ms. Frahm a birthday card despite her wish, as expressed to you, that you refrain from contacting her.

7. On Valentine's Day, 1991, you sent My Frahm an unsigned Valentine which professed your love for her. The Valentine was sent to Ms. Frahm's private, non-public post office box rather than through campus mail.

8. In June 1991, you sent Ms. Frahm a birthday card at her private post office box address.

9. As a result of this incident, Ms. Frahm again complained to the Human Resources Office and filed a complaint against you. This complaint resulted in a formal letter of censure and an order that you desist from contacting Ms. Frahm. This letter was signed by the then Vice President of Academic Affairs and was dated July 11, 1991.

10. In January, 1992, you sent Ms. Frahm a notice of deposition pertaining to a law suit you had filed against the College. The notice was sent to Ms. Frahm at her home address, which is unlisted.

11. In June, 1992, you sent Ms. Frahm another birthday card at her home address. As a result of this action, Ms. Frahm notified the College and a disciplinary action was instituted against you. On October 30, 1992, the College took action to suspend you without pay for four (4) days as indicated in a letter from the then Acting Vice President of Academic Affairs.

12. During June, 1993, you sent Ms. Frahm another birthday card. As a result of this action, Ms. Frahm notified the College and a further disciplinary action was instituted against you. On August 6, 1993, the College took action to suspend you for ten (10) days without pay as indicated in a letter from Ms. Boatright.

13. In all disciplinary actions taken to date, the College has determined that you have violated the terms of the College-United Professors of Marin Collective Bargaining Agreement, College Policy 5.0004 and Education Code Section 210 et seq all of which prohibit sexual harassment. In all disciplinary matters to date, you have been put on notice that your conduct towards Ms. Frahm was not acceptable and you have been advised to refrain from further unwanted contracts with Ms. Frahm.

14. In June of 1994, you sent Ms. Frahm another birthday card. She subsequently notified the College of your continued refusal to avoid contract with her.

The undersigned declares under penalty of perjury that the foregoing is true and correct to the best of his information and belief.

Executed on September 8, 1994, at Kentfield, California.

s/ _____
James E. Middleton
Superintendent/President

[CT 252]

RESOLUTION No. 94/95-9

RESOLUTION OF THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT COUNTY OF MARIN, STATE OF CALIFORNIA

RESOLUTION OF DISMISSAL

IT IS HEREBY RESOLVED by the Governing Board of the Marin Community College District, County of Marin, State of California, that:

WHEREAS, on the 8th day of September, 1994, written charges and a recommendation that this Board issue a statement of dismissal to Lawrence Wm. Jordan, a regular academic employee of this District, was received from Dr. James E. Middleton, Superintendent/President;

WHEREAS, said charges constitute grounds for dismissal under the Education Code of the State of California, and it is the desire and intent of this Board to dismiss said employee based upon said charges pursuant to the recommendations received:

NOW, THEREFORE, IT IS HEREBY RESOLVED:

1. That pursuant to the provisions of Sections 87732, and 87666 et seq. of the California Education Code, Lawrence Wm. Jordan shall be given notice that he is dismissed and has the right to file a written objection to the decision of this Board, or the reasons therefor, within thirty (30) days after service of said notice upon him, pursuant to Education Code Section 87673; and

2. That said Notice of Decision to Dismiss, Statement of

Decision to Dismiss, and Statement of Charges shall be signed by the Superintendent/President for and on behalf of the Board, and shall be served personally and/or by registered mail on Lawrence Wm. Jordan.

Regularly passed and adopted this 8th day of Sept., 1994, by the Governing Board of the Marin Community College District of Marin County, California, by the following vote:

AYES, in favor of said Resolution: s/Greg Brockbank
s/Phyllis Metcalfe
s/Dale A. Fleming
s/April Post
s/C. Dillon-Knutson
s/Howard Schoof

NOES, against said Resolution:

ABSENT TRUSTEES: Barbara Dolan (JEM)

I, James E. Middleton, Secretary of the Governing Board of the Marin Community College District of Marin County, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the said Board at a special meeting of the Board on September 8, 1994, by the vote above stated, which resolution is on file in the office of said Board.

s/James E. Middleton
Secretary

[CT 266]

MARIN COMMUNITY COLLEGE DISTRICT

BOARD POLICY

HARASSMENT (EC 200, GC 12920)

5.0004

It is the policy of the Board to prohibit harassment of an employee, applicant or student by any District employee on the basis of race, religious creed, color, ancestry, national origin, physical handicap, medical condition, marital status, sexual preference, sex or age. Conduct of non-employees while on District property is also expected to follow these guidelines.

Specifically, employees shall not threaten or suggest, either

explicitly or implicitly, that an employee's, student's, or applicant's refusal to submit to any form of harassment will interfere or adversely affect the employee's, student's or applicant's employment, work performance, academic performance, academic status, academic progress, evaluation, wages, advancement, career development, assigned duties, hours or any other condition of employment, nor shall employees create an adverse or offensive working or academic environment.

There shall be a procedure to receive and resolve complaints concerning harassment.

Harassment includes, but is not limited to:

1) Verbal Harassment - For example, epithets, derogatory comments, jokes, or slurs on the basis of race, religious creed, color, national origin, sexual preference, ancestry, physical handicap, medical condition, marital status, sex, or age.

2) Physical Harassment - For example, physical gestures, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, sex or age.

3) Visual Forms of Harassment - For example, derogatory posters, notices, objects, bulletins, cartoons, or drawings on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, sex or age.

4) Sexual Harassment - Sexually harassing conduct in the workplace or academic environment, committed by employees, is also prohibited. This includes unwanted sexual flirtations, unwanted advances or propositions, unwanted physical conduct of a sexual nature, verbal abuse of a sexual nature, sexually degrading words used to describe an individual, in the workplace, in conjunction with any work related activity, or in the academic setting.

The District shall provide training and education for all staff on the topic of harassment.

Adopted: Board of Trustees
January 12, 1988

Lawrence Wm. Jordan, pro se
P. O. Box 176
Kentfield, CA 94914-0176
Tel: 415-461-0912

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

LAWRENCE WM. JORDAN,	)	
	)	
Petitioner,	)	No. 158373
	)	
v.	)	ALTERNATIVE WRIT OF MANDAMUS
	)	
MARIN COMMUNITY COLLEGE DISTRICT,	)	
	)	
Respondent.	)	

The People of the State of California
To Marin Community College District, respondent:

Good cause appearing from the verified petition for a writ of mandamus on file in this proceeding,
YOU ARE HEREBY COMMANDED, by order of this Court made on 1993 October 14 to set aside your decisions of 1993 August 06, 1992 October 30, and 1991 July 01, the the proceedings alleging petitioner Lawrence Wm. Jordan to be guilty of Sexual Harassment immediately after receipt of this writ; or
IN THE ALTERNATIVE, to show cause before this Court on 1993 November 17 at 9 o'clock a.m. in Department 2 why you have not done so.
This alternative writ and copy of petition must be served on respondent at least 15 days before the hearing on the order to show cause.
DATED: 1993 October 14

HOWARD HANSON, Clerk
By P.FAN

LET THE FOREGOING ALTERNATIVE WRIT OF MANDAMUS ISSUE.

DATED: 1993 October 14

s/ BEVERLY B. SAVITT
Judge

(SEAL)

Supp. App. 10

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT, Plaintiff, vs. LAWRENCE WM. JORDAN, Defendant.	) No. 158791) ORDER SUSTAINING) DEFENDANT'S) DEMURRER TO) PLAINTIFF BOARD'S) COMPLAINT FOR) INJUNCTION

Defendant's demurrer to Plaintiff Board's Complaint for Injunction is granted.
Plaintiff is not the Real Party in Interest as required by CCP § 367.
Plaintiff has alleged no irreparable injury to itself from plaintiff's acts.
Plaintiff is granted 20 days to file an amended complaint.
IT IS SO ORDERED.
DATED: 1994 March 23.

s/ BEVERLY B. SAVITT
Superior Court Judge

FILED MAR 23 1994
HOWARD HANSON
MARIN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

[CT 138]

FILED
1-26-94
HOWARD HANSON
MARIN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR MARIN COUNTY

GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT,

Plaintiff,

vs.

LAWRENCE WM. JORDAN,

Defendant.

No. 158791

JUDGMENT

This matter came on before the court on a Demurrer to the Complaint for Injunctive Relief before the honorable Beverly B. Savitt, judge, on 1994 February 09. The demurrer was rule upon based upon the papers filed by the parties. No request for appearance and argument was made.

The court issued a Minute Order sustaining the Defendant's Demurrer and ruling that plaintiff was not the Real Party in Interest as required by CCP § 367 and had alleged no irreparable injury to itself. On 1994 March 23 the Court entered an Order Sustaining Defendant's Demurrer to the Complaint on the ground that Plaintiff was not the Real Party in Interest; Plaintiff had failed to allege any irreparable injury to itself; and granting plaintiff 20 days to file an amended complaint.

Plaintiff has not filed an amended complaint within the 20 day period allowed and the time for filing said amended complaint has now passed.

In accordance with the conclusions of law set forth in the ruling of 1994 February 09 and the Order entered 1994 March 23; and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The complaint is hereby dismissed;
2. Defendant is awarded his costs incurred herein.

DATED: JUN 03 1994

s/ Beverly B. Savitt
Judge of the Superior court

FILED
JUN 03 1994
HOWARD HANSON
MARIN COUNTY CLERK

LAWRENCE WM. JORDAN,	)
	)
Petitioner,	) No. 158373
	)
v.	) JUDGMENT FOR
	) ISSUANCE OF
MARIN COMMUNITY COLLEGE DISTRICT,	) PEREMPTORY WRIT OF) MANDAMUS) CCP § 1094.5
Respondent.	)

An Alternative Writ of Mandate and Order to Show Cause having issued herein on 14 October 1993 in the above-entitled matter, and the same having come before me for hearing on 17 November 1993, Lawrence Wm. Jordan, petitioner having appeared pro se and Larry J. Frierson appearing as attorney for respondent Marin Community College District; and the court having considered the proofs offered by the respective parties and having heard the arguments of respondent; and the court being fully advised in the premises; and the court finding that suspensions must be in accordance with the Education Code, and it appearing that the Board of Trustees has failed and refused to issue a final order; and it appearing that respondent has not granted petitioner a hearing before an arbitrator pursuant to the Education Code §§ 87660, 87661, 87669, 87672, 87674, 87678, 87622, 87632; and it appearing that a peremptory writ of mandate should issue and that petitioner has no plain speedy, or other adequate remedy in the ordinary course of the law;

The other issues raised in the petition are moot and the court makes no determination at this time;

IT IS ORDERED that a Peremptory Writ of Mandate in due form be issued requiring respondent to set aside its decisions of 1993 August 06, 1992 October 30, and 1991 July 01; this matter is hereby remanded to respondent Marin Community College District for such further proceedings as required in accordance with this judgment and the Peremptory Writ of Mandate.

The award of costs and damages is held in abeyance pending the conclusion of proceedings below.

DATED: Jan 26 1994

s/ Beverly B. Savitt, Judge

FILED
MAY 5 1995

HOWARD HANSON
MARIN COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN
APPELLATE DIVISION

LAWRENCE WILLIAM JORDAN, Plaintiff/Respondent, v. MARIN COMMUNITY COLLEGE DISTRICT, Defendant/Appellant.	))) No. 160304))ORDER AFTER) HEARING)))

This case is an appeal of a Municipal Court judgment, following a grant of a motion for summary judgment in favor of respondent district. Petitioner was order to pay sanction.

This court finds that in ordering the summary judgment for respondent, the trial court erred in finding that respondent lawfully terminated appellant from his position as coordinator pursuant to Education Code, Section 87484. From respondent's own evidence supporting summary judgment, it appears that the decision to terminate appellant's extra assignment was made by administratives and not by the district's "governing board," as required by the plain meaning of Section 87484.

The trial court further erred in finding, as a matter of law, that respondent, "lawfully disciplined plaintiff pursuant to the applicable collective bargaining agreement." Section 8.3.6 of the agreement is at least ambiguous as to whether determinations of "failure to produce the final outcome or product at a time specified ... " must be made by the Union-District Workload Committee ("UDWC"). The record clearly shows that the UDWC made no such finding. The reference to portions of the collective bargaining agreement contain no indication that the acting vice-president of planning and development was authorized to make the determinations instead of the UDWC. Moreover,, section 8.3.6 only provides for repayment of compensation where the individual has actually "failed to produce the final outcome or product at the time specified." Portions of respondent's own evidence, as well as appellant's evidence, raise a triable issue of fact as to whether appellant had substantially complied with requirements of his

position by the end of December 1991 as "fact" 23 was not established, respondent failed to show as a matter of law, that "plaintiff did not perform the services or work and labor for which he was compensated." Thus, respondent also did not defeat appellant's cause of action for money had and received.

Finally the trial court erred in not issuing an order specifying the supporting evidence, as required by Code of Civil Procedure, Section 437c, subd. (g).

This court finds that the trial court did not err in ordering appellant to pay $250 in sanctions for failure to appear at his deposition.

The judgment entered upon a grant of summary judgment is reversed. The case is remanded to Municipal Court for trial. The trial court's order requiring appellant to pay $250 in sanction is affirmed.

Dated: 27 April 1995

s/ _____
LYNN O'MALLEY TAYLOR
Judge of the Superior Court
Appellant Division

s/ _____
RICHARD H. BREINER
Judge of the Superior Court
Appellate Division

s/ _____
MICHAEL B. DUFFICY
Judge of the Appellate Court
Appellate Division

[CT 344]

BEFORE THE GOVERNING BOARD OF THE
MARIN COMMUNITY COLLEGE DISTRICT

In the Matter of the Accusation Against:	)	
LAWRENCE JORDAN,	)	OAH No. N 9411146
Respondent.	)	

_____)

DECISION

Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on February 21 and 22, 1995, at San Rafael, California.

Margaret M. Merchat, Attorney at Law, represented the Complainant.

Lawrence W Jordan represented himself.

Submission of the matter was deferred to March 17, 1995, for receipt of written argument which was duly received and marked for the record. On March 28, 1995, the respondent moved to supplement the record. The complainant filed a letter of opposition to said motion on April 5, 1995. After reviewing the arguments of both parties, the administrative law judge denied respondent's motion on April 17, 1995. The matter was deemed submitted as of said date.

FINDINGS OF FACT

I

Lawrence W. Jordan (respondent) is a full time permanent certificated employee of the Marin Community College District (the District).

II

On September 8, 1994, James E. Middleton, the Superintendent and President of the District, recommended to the Governing Board that it dismiss respondent for evident unfitness for service and persistent violation of or refusal to obey the school laws of the State or regulations of the Board. Notice of this recommendation was provided respondent.

III

On September 8 1995, the Governing Board resolved to dismiss respondent based upon the recommendation of the Superintendent.

IV

Respondent requested a hearing.

V

Respondent has an undergraduate degree in chemistry [sic], a MS Degree in chemistry [sic] and the Ph.D. in chemical engineering. He attended law school at U.C.L.A. from 1968 to 1971 where he received his LL.B. [sic] He joined the District July 1, 1989.

VI

Janet [sic] Frahm started working in the District in the fall of 1981 in a .4 FTE[1] position. She continued the following spring semester and left shortly thereafter. She returned in the spring of 1989 and continued working through the summer of 1993 in less than a 1.0 FTE position. She was an instructor in the Speech Department. The evidence shows she was a part time academic employee of the District. Her status is that of an Eligible Temporary Credit Unit Member instructor. As such, she has the first right of assignment as an instructor when a position opens in her discipline.

VII

Respondent met Frahm in 1989. They attended an open house party. Thereafter, Frahm told respondent she wanted no contact from or with him. In 1990, Frahm learned that respondent had contacted her Alma Mater seeking information about her. Frahm told respondent she considered this an invasion of her privacy. Frahm complained to the College about respondent's conduct.[2]

VIII

In June 1991, respondent sent Frahm a belated Happy Birthday post card which he obtained in New Zealand but mailed from North Bay, California. Frahm was upset at receiving this card from someone whom she told not to contact her. She reported the incident to a College vice-president.

IX

By letter dated July 19, 1991, the vice-president of Academic affairs notified respondent that he was censured for

[1] Full time equivalent.

[2] These findings are not made for purposes of disciplinary action but rather to explain some of the background of this matter and to show respondent's knowledge of Frahm's feelings toward him.

violating Article 24.2 of the collective bargaining agreement between the District and the United Professors of Marin. Respondent was notified that further unwanted contact with Frahm would result in a suspension without pay.

X

On January 2, 1992, respondent sent Frahm two letters informing her he had sued the District over a finding he had engaged in sexual harassment and desired to take her deposition. He asked her to contact him and advise whether she would appear voluntarily and which days would accommodate her schedule.

One letter was sent to Frahm's street address. The other was sent to her Post Office Box number. Frahm became upset when she realized respondent knew both addresses. She felt as though respondent was "tracking" her. She cried, became nervous and experienced "shakes." Frahm sought the advice of friends. She called the Union.

XI

In June 1992, respondent sent Frahm another post card from North Bay. The picture on the front of the card was of a cat. Respondent wrote "Happy Birthday, Larry" on the reverse side. The card was sent to Frahm's street address. Frahm became upset and contacted the College.

XII

By letter dated October 30, 1992, the acting vice-president of academic affairs notified respondent of his suspension for four days without pay for a second violation of Article 24.2 of the collective bargaining agreement. Respondent was also notified any further unwanted contact with Frahm would result in a ten day suspension without pay. Article 24.2 authorizes disciplinary action against members of the United Professors of Marin for engaging in discrimination/harassment.

XIII

In June 1993, respondent sent Frahm a birthday card from San Francisco to her street address. Frahm became angry, disgusted scared and worried. The card depicted a smiling girl on the front with the following words:

"Whatever makes you smile most ..."

Inside, the card reads:

"... is what I hope you'll do today. Happy Birthday"

The card is signed:

"Larry"

XIV

By letter dated August 6, 1993, the vice-president of academic affairs notified respondent that he was suspended without pay for ten days. Respondent was also informed that further unwanted contact with Frahm would result in additional penalties.

XV

On June 25, 1994, respondent sent a birthday card to Frahm at her street address. The front of the card depicted a bird in flight, stars, flowers, the sun, balloons, a rainbow and hearts. The words "Success, Joy, Friendship, Health, Smiles, Happiness and Love" also appeared. The stamp on the envelope read "Love" and depicted a heart.

The interior of the card read:

"Many wishes to you for a truly memorable year Happy Birthday"

Handwritten was the following:

"Thanks for your assistance Larry"

XVI

Frahm had no idea what the reference to "assistance" meant. She became angry, disgusted and upset. Once again, she spoke to college administrators and friends.

XVII

Respondent sent to Frahm's street address an empty envelope on September 13, 1994. The envelope bore his return address and the statement:

"DO NOT FORWARD

Address correction requested."

XVIII

Before September 13, 1994, Frahm had moved to a new location. This address was not listed in a telephone book. Her former landlord contacted Frahm to advise her of the delivery. When Frahm obtained the envelope from her former landlord, she was shocked. She did not understand why it was empty. Feelings of being "tracked" recurred.

XIX

As a result of these unwanted contacts, Frahm found herself constantly looking out for respondent's presence on the campus. On one occasion during the 1993 summer session, she saw respondent walking in front of her. Frahm jumped behind a tree and made her way to her car by sneaking behind other vehicles. She observed him staring at her during meetings which made her feel uncomfortable. She refused to attend some meetings fearing respondent might be present.

On one occasion, she was required to attend a two day meeting on diversity. When she learned respondent would be present, she sought support from the administration. The District assigned a male to accompany Frahm throughout the two day session. Frahm sat in the back of the room to avoid the possibility of respondent staring at her.

Frahm has altered her life style to avoid being in respondent's presence. She ceased attending college functions and limits giving information about herself to others. She leaves in-service training meetings if respondent is present. She does not disclose her current street address. She reveals her Post Office box only to those from whom she wishes to receive mail.

XX

Frahm has taken action to keep her records confidential. The evidence shows respondent obtained Frahm's former street address by searching through the voter registration files. Frahm took steps to close her voter registration information when she moved.

XXI

Respondent filed a grievance against the District after imposition of his suspensions and sought arbitration

unsuccessfully. Thereafter, respondent filed a mandate action in the Superior Court, County of Marin, against the District under Code of Civil Procedure section 1094.5 for money judgment, costs, sanctions, restitution and a declaration that the District's acts are void.

On December 10, 1993, the Court, citing Education Code sections 87672 and 87674, ordered that respondent is entitled to receive a written statement of decision from the Governing Board and, if requested, arbitration.

On January 25, 1995, the Court issued a ruling observing, inter alia, that the action should have been brought under Civil Code of Procedure section 1085. The Court further noted it had directed the District to conduct further proceedings in accordance with provisions of the Education Code relating to suspensions. The Court specifically did not find that the suspensions imposed against respondent were improper or invalid.

XXII

Respondent asserts that the District's failure to comply with Education Code sections governing the suspension of certificated employees led him to engage in the conduct vis-a-vis Frahm as found hereinabove. He explains he was simply seeking to preserve his claim against the District to move on his request for arbitration. In other words, Frahm was merely a means to an end.

XXIII

Although respondent asserts he probably became aware in 1993 that Frahm thought he was "a pain," it is clear he was aware as early as 1989 she did not want any contact with him.

XXIV

Respondent has life time secondary credentials in mathematics, physics, chemistry, biology and social sciences and community college credential in engineering. He has taught courses in engineering drawing, circuit anatomy [sic], material science, statistics, computer science, physics, mathematics and chemistry.

XXV

Respondent worked for Standard Oil from 1960 to 1967 and did research [sic] in community relations at U.C.L.A. He

was employed at Aerojet General from 1967 to September 1968. After his graduation from law school in 1971, he moved to Oregon where he was in private practice and also served as a City Attorney and Assistant Director of the Building Codes Division for the State of Oregon. He was disbarred in Oregon and moved to California in 1989.

XXV!

Governing Board policy No. 5.0004 prohibits harassment of an employee by any District employee on the basis of race, religious creed, color, ancestry, national origin physical handicap, medical condition, marital status, sexual preference, sex or age. Paragraph 4 of Section 5.0004 states:

> "Sexual Harassment- sexually harassing conduct in the workplace or academic environment, committed by employees, is also prohibited. This includes unwanted sexual flirtations, unwanted advances or propositions, unwanted physical contact of a sexual nature, verbal abuse of a sexual nature, sexually degrading works used to describe and individual, in the workplace, in conjunction with any work related activity, or in the academic setting."

DETERMINATION OF ISSUES

SEX HARASSMENT

I

Education Code section 212.5 defines "sexual harassment."[3] Education Code section 220 proscribes such conduct in educational institutions in California. Government Code section 12940 bars sex discrimination in the workplace

[3] The relevant portion states:

> For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
>
> (c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

when the complained of conduct creates a hostile or offensive environment (Fisher v. San Pedro Peninsula Hospital 214 Cal.App.3d 590 [1990], review denied).

If a preponderance of the evidence shows that unwelcome conduct linked to sex has occurred, and that this conduct was either sufficiently severe or sufficiently pervasive that, for a reasonable female employee, the conduct would created an intimidating, hostile, or offensive environment or otherwise interfere with the employee's emotional well-being, the conduct constitutes sex (gender) discrimination, and a violation of the Education Code section 220 within the meaning of Section 212.5(c) and Government Code section 12940 is proven (Fisher, supra; Rojo v. Kliger 52 Cal.3d 65, 73 [1990]).

II

When evaluating a sex discrimination claim, a reasonable employee is one of the same sex as the complainant (Fisher, supra at page 609, fn. 7; Ellison v. Brady 924 F.2d 872, 878-879 [9th Cir. 1991]).

III

In this matter, the District alleges that Frahm suffered unwelcome conduct linked to her sex that denied her the benefit of a work environment free of harassment. The evidence established a pattern of unwanted contact over a four year period. Respondent does not dispute that he sent the cards and empty envelope. He argues, however, that this conduct was not sexual. Although his sending of birthday cards was neither explicitly sexual nor given to the exclusion of others, Frahm did not know this at the time and reasonably interpreted these cards to be personal to her.

Additionally, some of respondent's behavior was focused on Frahm alone. His attempts to discover her residence address after she moved and his thanking her for her assistance were clearly directed at her. All of respondent's conduct occurred after Frahm had told him she wanted nothing to do with him. The evidence shows Frahm did nothing to communicate to respondent she had any personal interest in him or that she welcomed his attention. Respondent's conduct may not have constituted sexual harassment per se, but it clearly was harassment based upon gender.

Furthermore, respondent's obsessive conduct defies logic in the absence of a reasonable explanation. His stated

reason, that Frahm was simply a means to an end, is simply unpersuasive. Respondent pursued legal action against the District and has thus far prevailed. His conduct toward Frahm was juvenile and immature. Considering respondent's intellectual achievements and success, the only inference that arises is that his unwanted conduct constituted harassment based upon Frahm's gender.

IV

Respondent urges that his conduct falls under the umbrella of First Amendment and academic freedom principles but cites no authority for the proposition that concepts of academic freedom insulate all conduct from scrutiny under Education Code sections 212.5 and 220 and Government Code section 12940.

V

Courts have recognized two types of sex discrimination under state and federal law. These include claims of "quid pro quo" harassment and harassment created by a "hostile environment" (Meritor Savings Bank v. Vinson, 477 U.S. 57 [1986]; Ellison, supra). The hostile environment complaint may arise where unwelcome conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive working environment even if it does not lead to tangible or economic job consequences (Fisher, supra; Meritor, supra; Hicks v. Gates Rubber Co., 833 F.2d 11406 [sic], 1413 [10th Cir. 1987). Having concluded that respondent's conduct constituted unwelcome gender-based harassment of Frahm, the next analytical step is to decide whether the conduct created a hostile work environment.

VI

Fisher looks to the totality of the circumstances in determining whether the conduct is sufficiently pervasive or severe to create such a hostile environment. Factors to be considered are: the nature of the unwelcome conduct, the frequency of the offensive conduct, the total time over which the behavior occurred and the context in which the conduct occurred (Fisher, at p. 610).

The evidence shows there were no touching incidents. However, the evidence also shows that respondent was aware, from the beginning, of Frahm's desire that he have nothing to do with her. The incidents took place over a four year period. In

one instance, respondent went out of his way to discover Frahm's new address by sending to her former residence an empty envelope with the notation: DO NOT FORWARD-Address correction requested. Fisher disallows "trivial," "isolated," "sporadic," and "occasional" incidents. The conduct must be "severe" or "pervasive."

The most important factor under Fisher is not the incidents themselves but rather the context in which they occurred. Respondent and Frahm were colleagues on the District's faculty. The evidence shows respondent had no responsibility for offering employment opportunities to Frahm or supervising her work.

The creation or existence of a hostile, intimidating or offensive work environment due to harassment that is gender based deprives the victim of a discrimination-free work environment. Consequently, an employee who is forced to work in such an environment need not prove loss of any tangible job benefit (Government Code section 12940(h); Meritor, supra; Fisher, supra).

The context in which respondent's harassing conduct occurred clearly created an abusive work environment for a reasonable female employee. Frahm's emotional well-being was negatively impacted by respondent. She felt stalked. She went out of her way to avoid respondent on the campus, sought protection from him when attending in-service meetings and even relocated in the hope he would not discover her new address.

The evidence shows Frahm's reaction to respondent's conduct was real and reasonable and not out of proportion to the nature of respondent's conduct. The evidence demonstrates that respondent's conduct would have rendered a reasonable female employee's work environment sufficiently intimidating, hostile or offensive so as to interfere seriously with her emotional well-being.

The United States Supreme Court, in Harris v. Forklift Systems, 510 U.S. ___ (1993), in a Title VII case, held that the conduct in question need not seriously affect a plaintiff's psychological well-being or lead a plaintiff to suffer injury. The Court further held that "so long as the environment would reasonably be perceived, and is perceived, as hostile or abusive ... there is no need for it also to be psychologically injurious." The Court concluded that "while psychological harm, like any other relevant factor, may be taken into account, no single factor

is required."

Respondent's conduct was sufficiently severe or pervasive to create a hostile or offensive work environment for Frahm.

VII

The totality of the circumstances demonstrate that respondent engaged in harassing conduct toward Frahm because of her gender. Such conduct constitutes unlawful sex discrimination.

RULES AND REGULATIONS

VIII

The District claims respondent has persistently violated or refused to obey the school laws of the State and regulations of the Board. Respondent argues that the contract between the District and the United Professors of Marin is not a rule or regulation of the Board.

IX

A fair reading of Article 24.2, et seq. of the contract between the District and the United Professors of Marin clearly indicates the broad scope given to proscribed discriminatory/harassment conduct. Any form of sex (gender) based harassment which has a substantial adverse effect on the work environment denies the "full and equal services" guaranteed under the Unruh Act (Civil Code section 51), Education Code section 220 and Government Code section 12940 and is included within the contract as disciplinable conduct.

X

Government Code sections 3540.1, 3543.2, 3543.3 and 3546 govern union organizational security agreements (Moreno Valley Unified School District v. Public Employees Relations Board 142 Cal.App.3d 191 [1983]). Section 3540.1(h) provides that a contract between the exclusive representative and the public school employer shall be binding upon both parties (see also Glendale City Employees' Assn., Inc. v . City of Glendale 15 Cal.3d 328, 337 [1975] and San Lorenzo Education Assn. v. Wilson 32 Cal.3d 841 [1982]).

XI

In Bourland v. Commission on Professional Competence 174 Cal.App.3d 317 [1985], the Court overruled the dismissal of a teacher who had persistently refused to obey her principal's repeated directions to write a performance objective. The teacher's dismissal was sought under Education Code section 44932(a)(7).[4] The genesis of the dispute arose under a collective bargaining agreement which provided:

> The primary basis for Bargaining Unit member performance evaluation shall be the results achieved based upon objectives which have been mutually established by the Bargaining Unit member and his/her supervisor. When conflict arises between the Bargaining Unit member and the immediate supervisor as to reasonable student growth or reasonable Bargaining Unit member work performance expectations, the immediate supervisor's decision shall prevail.

Bourland disagreed with her supervisor's assessment that she was deficient in two particular areas and repeatedly refused to submit objectives in these areas as requested. The Court, stating "We do not see how the mere expression of the existence of 'conflict' can constitute a violation of the collective bargaining agreement," held the teacher's dismissal resulted from her disagreement with her principal and not from any violation of the contract thereby clearly implying that the contract was, indeed part of the district's regulations.

XIII

Statutory and case law make it clear that contracts between a bargaining unit and a board are binding on the parties and constitute rules and regulations of the adopting board.

XIV

The evidence demonstrates that respondent persistently violated Education Code section 220 and persistently violated Article 24.2 of the collective bargaining agreement and Board Policy No. 5.0004.

EVIDENT UNFITNESS FOR SERVICE

XV

[4] Identical to Section 87732(g).

"Evident unfitness for service" has been defined as conduct that renders the teacher "unfit to teach" (Morrison v. State Board of Education 1 Cal.3d 214 [1969]; Oakland Unified School District v. Olicker 25 Cal.App.3d 1098 [1972]). In Palo Verde School District v. Hensey 9 Cal.App.3d 967 (1970), the court construed the phrase according to its common and approved usage, i.e., one who has clearly demonstrated he or she is unsuitable, incompetent, incapable or not adapted for a particular service or use is evidently unfit for service.

XVI

Morrison delineates those criteria which determine unfitness. A careful and reasoned inquiry of the Morrison criteria must be made based upon all of the evidence before determining whether a teacher is unfit to teach (Board of Education v. Commission on Professional Competence 102 Cal.App.3d 555 [1980].

XVII

The Morrison criteria are:

1. The likelihood that the conduct adversely affected students or colleagues.

The evidence certainly demonstrates that Frahm, a colleague, was adversely affected by respondent's conduct. She became emotionally upset and sought numerous ways to avoid respondent on campus. She asked the District to assign someone to accompany her to an in-service meeting which she and respondent attended. Furthermore, the evidence also shows that respondent's conduct adversely affected the school administration which was required to spend much time and effort attempting to resolve the problem when Frahm brought it to their attention.

2. The degree of such adversity expected.

The evidence shows the extent to which Frahm was affected. Aside from bringing the matter to the attention of the administration, she relocated to avoid receiving further mail from respondent and sealed her address in the voter registration files of Marin County.

3. The proximity or remoteness in time of the conduct.

Respondent engaged in the unwanted conduct during

each of the four years immediately preceding the charges against him. The evidence demonstrates a pattern of continuous conduct during this four year period which shows its proximity to the charges.

4. Extenuating or aggravating circumstances.

The evidence shows absolutely no extenuating circumstances. Respondent's explanation, to wit: that Frahm was merely a means to force the District to comply with his demands, is a sham. Respondent had already taken legal action against the District. He was well aware of Frahm's expressed desire to have nothing to do with him. He went out of his way to obtain her address after she moved in 1994. All of these factors show the aggravating nature of his conduct.

5. The praiseworthiness or blameworthiness of the motives resulting in the conduct.

Respondent's motives completely lack praiseworthiness. The evidence of his blameworthiness is overwhelming.

6. The likelihood of recurrence.

Given the extended period of time over which respondent's conduct occurred despite repeated direction from his supervisors to cease and desist, and noting that the last incident occurred on September 13, 1994, just two weeks and one day [sic] before [sic] the filing of the charges against him, it is not only likely but probable that respondent's conduct would recur. This is borne out by his repeated refusals to correct his behavior and his refusal to recognize the true nature of his conduct.

7. The extent to which disciplinary conduct may inflict an adverse or chilling effect upon the constitutional rights of the teacher involved or others.

Respondent urges that his conduct involved First Amendment rights and that an adverse decision in this matter will have a chilling effect upon the rights of others.

A public employee may not be dismissed from his employment for the exercise of constitutional rights absent a showing that the restraints which the employing body would impose on those rights are justified by a compelling public interest (Bekiaris v. Board of Education 6 Cal.3d 575 [1072]).

Considering the finding that respondent engaged in unlawful conduct, it is difficult to discern how disciplinary action will have a chilling effect on his First Amendment rights. It is also difficult to discern how other faculty members could perceive a chilling effect upon their First Amendment rights when a colleague has been harassed as Frahm has been. Any extent to which disciplinary action may inflict an adverse or chilling effect upon the constitutional rights of others is negligible.

XVIII

The type of teaching credential held by respondent was given no consideration. Not all Morrison criteria need be considered in determining whether respondent is unfit to teach (West Valley Mission Community College District v. Concepcion, 16 Cal.App.4th 1766, 1777 [1993]; Governing Board v. Haar, 28 Cal.App.4th 369, 384 [1994])

XIX

In Woodland Joint School District v. Commission on Professional Competence 2 Cal.App.4th 1429 (1992), the Third District concluded that the legislature intended "evident unfitness for service" to refer only to acts resulting from a "defect in temperament." The court did not define "defect in temperament" except that it refers to conduct that ordinarily could not be corrected within the statutory warning period given to teachers who commit acts of unprofessional conduct.

XX

It is determined that respondent's conduct falls within seven of the eight Morrison criteria demonstrating his unfitness to teach. The evidence shows respondent was aware that his conduct was unwanted and had an adverse effect upon Frahm. His failure to correct his conduct can only be traceable to a temperamental defect. He continually refused to recognize constituted authority and obstinately committed insubordination. It is determined that respondent was unable or unwilling to remedy his unacceptable conduct that adversely affected Frahm. This conduct constitutes unfitness to teach under any of the definitions propounded by the courts. The evidence shows respondent's retention in the District "poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher" (Morrison, supra; Olicker, supra).

XXI

Respondent's conduct constitutes evident unfitness for service. Cause for disciplinary action exists under Education Code section 87732(e).

XXII

Respondent persistently violated and refused to obey the school laws of the state and reasonable regulations prescribed by the governing board of the district. Cause for dismissal exists under Education Code section 87732(g).

XXIII

Respondent's motions for sanctions and to dismiss the accusation are denied.

ORDER

1. Lawrence W. Jordan shall be dismissed from his certificated position with the Marin College Community District under Determination XXI and XXII, separately and jointly.

2. This Decision is effective upon service on the parties.

DATED: June 7, 1995

s/_____
STEWART A. JUDSON
Administrative Law Judge
Office of Administrative Hearings

[CT 387]

FILED NOV 6, 1995
HOWARD HANSON
MARIN COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

LAWRENCE WM. JORDAN,	)
	)
Petitioner,	) No. 164356
	)
v.	)
	) DECISION ON PETITION

STEWART A. JUDSON, Respondent. and THE GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DISTRICT, Real Party in Interest.	) FOR WRIT OF MANDATE

The court has reviewed and considered all documents submitted, including the Administrative Record, as well as arguments of the parties.

The court finds petitioner's position to be persuasive that respondent did not comply fully with all of the intricacies of Title V, various regulations, and certain provisions of the Education Code. If the court is to place form over substance, petitioner might prevail in his technical arguments.

At the trial level, this court finds substance to prevail over form. The lack of technical compliance with all of the provisions of the Education Code and other regulations subsequently ferreted out by petitioner do not give a basis for his writ of mandate. This is especially true when the court considers the particular choice of procedure taken by respondent.

The court finds that petitioner was afforded due process, was fully aware of the charges and received a fair hearing. There was substantial evidence to support the charges that justified petitioner's dismissal.

Upon exercise of its independent judgment, the court likewise finds that the evidence supports the charges that justifies petitioner's dismissal.

Petition for writ of mandate is denied.

Dated: November 6, 1995.

s/ _____
GERALD E. RAGAN
JUDGE OF THE SUPERIOR COURT

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

[Filed July 26, 1996]

DIVISION ONE

LAWRENCE W. JORDAN, Plaintiff and Appellant, v. GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DISTRICT, Defendant and Respondent.	A072322 (Marin County Super. Ct. No. 164356)

Lawrence W. Jordan was dismissed from his faculty position with the College of Marin (College) by the Marin Community College District (District) because his sexual harassment of a fellow instructor constituted unfitness for service and demonstrated a persistent refusal to obey laws and regulations proscribing harassment. (Ed.Code, § 87732, subds. (e) and (g) [now, subds. (d) and (f)].)[5] The District's decision was upheld by Administrative Law Judge Stewart A. Judson, after a full hearing on the matter. Jordan petitioned for a writ of mandate to compel reversal of the decision and the superior court denied the petition after reviewing the administrative record. On appeal, we affirm the lower court's order denying the petition, finding sufficient evidence to support Jordan's dismissal and no lapse of due process.

I. DISCUSSION

Our review of the trial court's denial of Jordan's petition for administrative mandate is limited to determining whether substantial evidence supports the trial court's findings, which it reached through its independent review of the evidence admitted at the administrative hearing. (*O'Connor v. State Teacher's Retirement System* (1996) 43 Cal.App.4th 1610, 1620; § 87682.) As a preliminary matter, Jordan denies that the trial court ever made an independent review of the administrative hearing evidence. But the trial court expressly stated that it reviewed all documents submitted to it, including the administrative record, and exercised its "independent

[5] All further statutory references are to the Education Code, unless otherwise indicated.

judgment" in finding the evidence sufficient to support Jordan's dismissal. The trial court did not itself articulate specific findings but it effectively adopted the findings of the administrative law judge which, we too, find to be supported by the evidence.

A. Substantial Evidence Supports the Finding That Jordan Engaged in Sexual Harassment, Persistently Refused to Obey Rules Proscribing Such Conduct, and was Unfit for Service as an Instructor.

California prohibits sexual harassment in employment and educational institutions, declaring it a form of sexual discrimination. (§§ 200, 212.5, 212.6, 230, subd. (d); Gov. Code § 12940, subd. (h)(1).) Federal law also forbids sexual harassment. (42 U.S.C. § 2000e-2, subd. (a)(1); *Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 63-67.) The collective bargaining agreement between the District and its instructors likewise prohibits sexual harassment. Consistent with these legislative edicts and its union obligations, the District has an express policy prohibiting its employees from sexually harassing students or fellow employees, so as to prevent "an adverse or offensive working or academic environment." The administrative law judge found that Jordan sexually harassed Janene Frahm, a fellow employee, and that Jordan's conduct was "sufficiently severe or pervasive to create a hostile or offensive work environment for Frahm." The evidence supports that finding.

1. Evidence presented at the administrative hearing.

Jordan is a former [sic] lawyer and joined the College faculty as an engineering and science instructor in 1989. Frahm is a speech communications instructor. She was a temporary, periodic employee of the College, and worked there during numerous semesters from 1981 to 1982 and 1986 to 1993, and had employee status through 1994. [sic]

Jordan and Frahm met in the fall of 1989 and dated once by attending an open house party together.[6] Soon after the party, Frahm wrote a note to Jordan saying she did not want any further involvement with him. Jordan did not accept the rebuff but instead wrote to Frahm's alma mater in April 1990, attempting to get personal information about her. Frahm learned of the attempt and expressed her displeasure to Jordan. She also complained to the College of Jordan's behavior and the College asked him to leave Frahm alone.

Ignoring the request, Jordan sat in on a class Frahm was teaching in the summer of 1990, and asked the registrar about

[6] As did the administrative law judge, we mention early events to provide a background while respecting the rule precluding reliance on "charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice." (§ 87680.)

enrolling in the class. Jordan also mailed a Valentine's Day card to Frahm's post office box in February 1991, professing his love for her. Jordan further ignored Frahm's and the College's pleas that he not contact her by sending June birthday cards to her every year from 1991 to 1994. Frahm had never told Jordan her birthday, only that it was in the latter part of June, and had never given Jordan her mailing or home address.

The birthday messages began in July 1991, when Jordan sent a postcard of New Zealand caves to Frahm's post office box, mailed from California, with the handwritten greeting "Belated Happy Birthday. Hope you find who/what you want in life." Frahm was upset to receive the unwelcome contact and informed the College. The College [sic] formally censured Jordan for sexual harassment and warned him that further communication with Frahm would be punished with suspension from teaching. Frahm's sexual harassment complaints were reported in local newspapers in October 1991 when Jordan was running for the College Board of Trustees.

Jordan sued the College over its disciplinary finding and wrote to Frahm in January 1992, asking her to contact him to arrange her deposition. Jordan mailed letter both to Frahm's post office box and to her street address. Frahm was "scared" and "extremely upset" to realize that Jordan had "somehow tracked down" her home address. She cried and shook upon receiving Jordan's letter at home, and worried about how he obtained the information and whether he had learned other personal information about her. She "felt stalked" and "harassed" and was concerned about her "safety and well being." She asked the College teachers' union for help.

In June 1992, Jordan mailed a postcard to Frahm's home address, depicting a bob cat and inscribed "happy birthday." Frahm was upset at receiving another unwelcome communication from Jordan and notified the College. The College [sic] suspended Jordan without pay for four days, and warned him that further harassment of Frahm would result in a longer suspension.

In June 1993, Jordan mailed a birthday card to Frahm's home address. The card shows a smiling person and reads "Whatever make you smile most ... is what I hope you'll do today. Happy Birthday!" As with the other cards, it was signed "Larry." Frahm was "angry," "upset," "scared" and "worried" by Jordan's recurrent contacts at her undisclosed home address. She felt "very spooky" that Jordan "was out there tracking down information about [her]." Frahm again notified the College and Jordan was again disciplined. This time, Jordan was suspended for 10 days without pay.

In December 1993, the College sought an injunction against Jordan and submitted Frahm's declaration attesting that

she had altered her life because of Jordan's unwanted contacts. She stated that she "ceased attending college sponsored functions because [she did] not want to be in the same room as him" and "had to be careful not to reveal information to third parties" because she feared Jordan would learn the information.

In June 1994, Jordan mailed yet another birthday card to Frahm's home address. The card, posted in Utah, bears a "Love" postage stamp. It depicts seven images on the cover, including a rainbow, balloons, and hearts, each corresponding to the phrases "Success," "Love," "Joy," "Happiness," "Friendship," "Smiles," and "Health." The printed sentiment reads "Many wishes to you for a truly memorable year. Happy Birthday," and is inscribed "Thanks for your assistance. Larry." Frahm thought it a strange note and had no idea what "assistance" Jordan meant. Frahm was "sick and tired of unwanted contact from a person who had been told time and time again to leave [her] alone and [she] wanted it to end." She notified the College of the latest card from Jordan, and the District decided to dismiss Jordan upon it superintendent's recommendation. Jordan was notified of that decision on September 8, 1994.

Meanwhile, Frahm moved from her home where she had been receiving birthday cards from Jordan. Frahm believes that Jordan "somehow" found out about her move and tried to "track [her] down" and discover her new address. On September 13, 1994, he mailed an empty envelope to her previous address and marked it "DO NOT FORWARD. Address correction requested." Frahm sought and obtained a court order closing her voter registration records to prevent Jordan from learning her new address.

Frahm testified that she felt that her safety "is threatened now on a continual, regular basis." She characterized Jordan's conduct as sexual harassment and explained that it affected her work environment at the College. She was hesitant to attend faculty meetings at the College, and missed some, because Jordan would stare at her. In order to attend a two-day meeting in which Jordan was known to be participating, Frahm was accompanied the entire time by a male administrator who acted as a "body guard." While on campus, Frahm felt that she had to constantly look over her shoulder to make sure Jordan was not following her. She described an incident during the summer semester of 1993 when she jumped behind a tree and ran from car to car to avoid confronting Jordan who was walking nearby. Frahm also described Jordan's habit of walking past her open office door, even though his office was in another building across campus.

A College administrator testified that Jordan's conduct upset Frahm and made Frahm reluctant to come to campus. The administrator also said that Jordan's conduct was

intimidating, hostile and disruptive of "the educational process." The District superintendent testified that the District felt an obligation to maintain a comfortable, open environment on campus and a legal responsibility to prevent sexual harassment. An expert on sexual harassment testified that sexual harassment is present if the harassment is based on the victim's gender, even if not provocatively sensual in nature. The expert also said that conduct outside the work place may constitute sexual harassment in employment if the offensive conduct is related to or linked to the work place.

At the hearing, Jordan admitted acquiring Frahm's street address from voter registration records and making recurrent unwelcome contacts to Frahm for four years, over the District's pleas to stop. He also admitted knowing, beginning in 1990, that Frahm was complaining about his conduct to the College and that, at least by 1992, she thought him "a pain in the butt." Jordan explained that he believed his constitutional right to free expression entitled him to contact Frahm and that his repetitive contacts allowed him to challenge the District's position that it could demand him to end those contacts. Jordan testified that Frahm was "a means to an end;" the end being to establish his constitutional right of free expression.

2. The evidence supports the findings of sexual harassment, persistent refusal to obey applicable rules, and unfitness for service.

The administrative law judge found Jordan's constitutional explanation for his conduct toward Frahm "unpersuasive," since Jordan had long been pursuing judicial redress for the perceived violation of his right of free expression and had no need to continue contacting her to preserve that action. He found that Jordan's "obsessive conduct defies logic" and constituted sexual harassment by creating an intimidating work environment. The administrative law judge also found that Jordan's conduct demonstrated persistent refusal to obey governing laws and regulations and unfitness for service.

These findings are supported by the weight of the evidence as described in detail above. Jordan harassed Frahm by a persistent refusal to respect her requests to be let alone, ferreting out her street address from government records and intruding into every birthday for four years with unwelcome cards. The harassment was sexual harassment, since Jordan initiated it when Frahm refused to date him again and inaugurated his communications with a Valentine's Day card professing his love for her. The first birthday card, too, bears an obvious reference to Frahm's rebuff with its stated wish that Frahm "find who/what you want in life." It is true that the

birthday cards were facially innocent. But "[s]exual harassment does not necessarily involve sexual conduct. It need not have anything to do with lewd acts, double entendres or sexual advances." (*Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 345.) Clearly, Jordan does not behave similarly in commemorating the birthdays of his male colleagues. The administrative law judge rightly concluded that the obsessiveness and intrusiveness of Jordan's fixation on this birthday card campaign reasonably intimidated Frahm.

While the cards were not delivered at the work place, there was sufficient evidence that Jordan' conduct in staring at Frahm at faculty meetings and roving past her office extended to the campus and the entire "concerted pattern" of his conduct created an offensive work environment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610.) Jordan's conduct is not absolved by the fact that he did not limit his activities to campus. A work place sexual harasser's wrongful conduct is not mitigated by encroachments into the victim's private life.

Finally Jordan's claim that the District is without authority to discipline sexual harassment is plainly wrong. An employer apprised of sexual harassment among its employees must "take immediate and appropriate corrective action," and "all reasonable steps to prevent harassment from occurring." (Gov.Code, § 12940, sub. (h)(1).) Jordan ignored the District's [sic] numerous directives to stop his harassing conduct, thus establishing a persistent refusal to obey applicable laws and regulations. (§ 87732, subd. (g) [now, subd. (f)].) Jordan's obstinate and offensive conduct also evidenced unfitness for service. (§ 87732, subd. (e)[now, subd. d]; see *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 [factors generally relevant to unfitness].)

B. There was No Deprivation of Due Process.

In addition to challenging the sufficiency of the evidence supporting his dismissal, Jordan also claims he was denied various procedural rights and protections. We are satisfied that due process was afforded Jordan.

1. Notification of dismissal decision.

The District received recurrent complaints of harassment from Frahm and urged Jordan on four separate occasions from spring 1990 to August 1993 to stop his unwelcome communications, and escalated the penalty for noncompliance

from censure to increasing periods of suspension.[7] Jordan remained intransigent, and the District's governing board resolved to dismiss him on September 8, 1994, upon the superintendent's recommendation following yet another complaint of harassment from Frahm.

Jordan received prompt notification of the decision to dismiss him, including a detailed statement of charges, advisement of his right to object, and a copy of relevant statutes. (§ 87672.) Jordan is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon. The District's statement of charges fully described Jordan's harassment of Frahm and explained that his conduct constituted "evident unfitness for service" and "persistent violation of or refusal to obey" school laws of the state and District board regulations, both of which provide grounds for dismissing tenured faculty. (§ 87782, subds. (e) and (g) [now subds. (d) and (f)].)

2. Performance evaluation.

Jordan complains that the District board dismissed him without first evaluating his teaching competency. It is true that the Education Code provides for dismissal upon satisfaction of certain grounds, including the District board's consideration of a performance evaluation. (§ 87671.) However, it is not clear that the board neglected to consider an evaluation of Jordan's performance. A February 1993 performance evaluation was presented with other documents at the administrative hearing to establish the District proceeded lawfully, so it may be that the evaluation was presented to the District board before it resolved to dismiss Jordan. Jordan has not proven to the contrary on appeal, and has failed to explain the presence of the evaluation in the record. In any event, Jordan's teaching competency was irrelevant to the board's resolution, which dismissed him for unfitness for service and persistent violation of rules because of his sexual harassment of Frahm.

3. Notification of administrative hearing.

The District honored Jordan's request for an administrative hearing to dispute his dismissal and advised him in November 1994 that a hearing was set for February 21-23, 1995 in San Rafael. The District personally served Jordan with a second notice on February 16, 1995, changing the hearing location to a different San Rafael office. Jordan argues that notice was inadequate because administrative procedures

[7] Jordan challenged the suspensions as violative of certain Educational Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. But the suspensions were not found invalid and, in any event, any procedural errors attending the suspensions did not lessen their effect in notifying Jordan of the inappropriateness of his conduct.

require that all parties receive notice of the hearing "at least 10 days prior to the hearing." (Gov.Code, § 11509.) The argument fails because Jordan received the original notice almost three months before the hearing and the amended notice served five days before the hearing changed only the location of the hearing within San Rafael.

While administrative procedures mandate at least 10 days advance notice of the hearing to apprise all parties of the time, place, and nature of the proceedings, it is not clear that a minor change in the place of the hearing requires an equivalent period of advance notice. (Gov.Code, § 11509.) We have held that a continuance of an administrative hearing to be held in a different city does not require satisfaction of the statutory notification standard, and found it sufficient that the interested party was informed at an administrative board meeting in Los Angeles that the matter was continued until a later Sacramento board meeting and had actual knowledge of the precise date at least three days before the hearing. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d 709, 711-712, 715.) Here, Jordan was formally notified of the date, time, place and nature of the administrative hearing well in advance and only the place was changed shortly before the hearing. The change in location was minor, from one office to another within the same city, and Jordan had actual knowledge of the change five days before the hearing. Jordan appeared at the hearing and made no claim there, or here, that he suffered any prejudice by the change of location. On these facts, we find no deprivation of due process or the intended protections of the administrative rule.

4. Discovery.

Finally Jordan says he was denied discovery opportunities. California community college employees in administrative proceedings have discovery "rights and duties" equivalent to civil action litigants in addition to discovery rights granted under administrative procedures. (87679; Gov.Code § 11507.6.) Jordan availed himself of his civil discovery rights by propounding interrogatories, a request for admissions and a request for production of documents by mail service on December 24, 1994. Second requests for production of documents and admissions were served by mail on January 5, 1995. A response to the first request for production of documents was due January 18, 1995, a response to the second request for admissions was due February 9, 1995, and the other three discovery responses were due January 30, 1995. [sic] (Code Civ. Proc. §§ 1013, subd. (a), 2030, subd. (h), 2031, subd. (h), 2033, subd. (h).)

Jordan also requested discovery under administrative procedures on December 24, 1994. (Gov. Code, § 11507.6.)

That request was untimely since it was not made within 30 days after service of the District's statement of charges mailed on September 8, 1994, nor within 15 days after service of the District's amended statement of charges mailed on November 23, 1994. (Gov. Code, § 11507.6.) Accordingly, no response was due to that request for discovery.

On January 30, 1995, Jordan petitioned the superior court to compel the District to respond to all outstanding discovery requests.[6] Since only one of the five properly propounded discovery requests was due for response before January 30, 1995, Jordan's petition was largely premature. Also, Jordan made no attempt to resolve the discovery problem by conferring with the District, as local court rules encourage. (Marin County Superior Court Rules, Rule 3.14(A).) A discovery hearing was set for February 16, 1995. The District responded to all civil discovery requests before the hearing. Responses were mailed on February 10, 1995, and received by Jordan three days later. The District opposed Jordan's effort to compel discovery or impose sanctions, explaining that it had failed to respond earlier because it's counsel had not realized that community college employees were entitled to civil discovery in addition to administrative discovery. The trial court found that the District had not acted in bad faith and ordered the matter off calendar since the District fully complied with its discovery obligations by the time of the hearing.

The trial court's resolution of the discovery dispute was proper. The court was entitled to excuse the District's belated discovery responses and the delay in response worked no prejudice upon Jordan. He received the District's response sufficiently in advance of the administrative hearing, and discovery was completed "prior to one week before the date set for hearing." (87679 Jordan was given all due process.

II. DISPOSITION

The order denying a petition for writ of administrative mandate is affirmed.

Strankman, P.J.

We concur:

[6] Jordan failed to present his requests for admissions to the trial court when he petitioned to compel discovery responses. (Code Civ. Proc., § 2033.)

Dossee, J.

Swager, J.

First Appellate District, Division One, No. A072322
S055256

IN THE SUPREME COURT OF CALIFORNIA

LAWRENCE W. JORDAN, Appellant

v.

GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DIST., Respondent

The time for granting or denying review in the above cause is hereby extended to and including October 31, 1996, or the date upon which review is either granted or denied.

SUPREME COURT
FILED
SEP 20 1996
Robert Wandruff Clerk

Chin
Acting Chief Justice

Supp. App. 42

First Appellate District, Division One, No. A072322
S055256

IN THE SUPREME COURT OF CALIFORNIA

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OCT 02 1996

LAWRENCE W. JORDAN, Appellant

Robert Wandruff Clerk

v.

GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DIST., Respondent

Petition for review DENIED.

GEORGE
Chief Justice

Supreme Court, U.S.
FILED
FEB 18 1997
CLERK

No. 96-1221

In The

Supreme Court of the United States

October Term, 1996

LAWRENCE WM. JORDAN,

Petitioner,

vs.

THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT,

Respondent.

On Petition For A Writ Of Certiorari To The California Supreme Court

RESPONDENT THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT'S BRIEF IN OPPOSITION

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I. INTRODUCTION

Petitioner LAWRENCE WM. JORDAN (hereinafter "JORDAN") was dismissed from his faculty position by Respondent GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT (hereinafter "DISTRICT") because his continuing sexual harassment of a faculty colleague, despite a series of warnings and disciplinary suspensions, constituted under California law unfitness for service and demonstrated a persistent refusal to obey laws and regulations proscribing said harassment.

Petitioner simply seeks to redress a perceived wrong affecting JORDAN and no other person. JORDAN's dismissal from his teaching position has been reviewed and upheld (1) by the administrative law judge; (2) by the trial court exercising its independent judgment; and (3) by the Court of Appeal, which affirmed the trial court's Order and found "sufficient evidence to support JORDAN's dismissal and no lapse of due process," while noting that JORDAN "is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon." Appellate Decision, App. 2-3, 11.

In his Petition JORDAN alleges mere error by the State Court of Appeal rather than asserting with any merit that this case implicates a broad institutional review for uniformity of decisions. Here review by this Court is not necessary to decide any important legal question. Moreover, Petitioner fails to identify any issue which is pending review by this Court in any other case. No public policy questions are raised in the instant Petition. There are no matters which significantly affect the

administration of justice. Nor does Petitioner identify any purported conflict among federal circuit decisions or state courts of last resort. In sum, JORDAN's Petition for Writ of Certiorari fails to establish the requisite grounds deserving of Supreme Court review. Therefore, the Petition should be denied.

Respondent DISTRICT respectfully requests that this Court deny the Petition for Writ of Certiorari which seeks review of the California Supreme Court's denial of review of an unpublished state Court of Appeal decision upholding the dismissal of Petitioner JORDAN from his faculty position.

II. STATEMENT OF THE CASE

Petitioner JORDAN was dismissed for (1) evident unfitness of duty (Education Code § 87732(e)) and (2) persistent violation of or refusal to obey applicable state laws and community college regulations. Education Code § 87732(g).[1] In essence, this case is based on Respondent DISTRICT's decision to terminate Petitioner JORDAN from his teaching position after his continued refusal to refrain from contacting a female faculty colleague who had complained of harassment by JORDAN.

The underlying facts show that (1) college instructor JORDAN continued to contact a female faculty colleague and to seek confidential information about her for over a four-year period, despite repeatedly being directed by both her and the DISTRICT times to desist from said

---

[1] Due to a non-substantive statutory amendment, now renumbered as (d) and (f).

contacts; (2) after numerous warnings to desist from contacting his faculty colleague, including two disciplinary suspensions without pay of four (4) and ten (10) days respectively,[2] the DISTRICT dismissed Jordan in the face of his continuing intransigent conduct; (3) during the full administrative hearing requested by JORDAN, he admitted the conduct and acknowledged that he had continued to contact his colleague despite the DISTRICT's warnings to desist; and (4) the administrative law judge found that JORDAN's actions were sufficiently severe or pervasive to create a hostile work environment for the faculty colleague; that JORDAN's conduct rendered him evidently unfit for service pursuant to Education Code § 87732(d), and that he had persistently violated applicable laws and community college regulations. Education Code § 87732(f).

---

[2] The state Superior Court subsequently ruled that the suspensions were procedurally infirm, as they had been based on provisions of the collective bargaining agreement rather than the Education Code. However, the California Court of Appeal concluded that the suspensions were not found to be invalid:

> Jordan had challenged the suspensions as violative of certain Education Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. *But the suspensions were not found invalid and, in any event, any procedural errors attending the suspensions did not lessen their effect in notifying Jordan of the inappropriateness of his conduct.* [Emphasis added.] Court of Appeal Decision, App. 11, n.3.

Proceedings Below

Subsequent to Petitioner's dismissal from his faculty position by DISTRICT, he requested, and was provided, a full administrative hearing on the matter. DISTRICT's dismissal decision was upheld by an administrative law judge. JORDAN then petitioned for a writ of mandamus to compel reversal of that decision. A California Superior Court denied the petition after reviewing the administrative record.

JORDAN then filed an appeal with the state Court of Appeal. On June 24, 1996, that Court affirmed the lower court's order denying the petition, finding sufficient evidence to support JORDAN's dismissal and that he had been afforded all requisite due process. *See* Court of Appeal Decision in Appendix.

A petition for rehearing was denied by the Court of Appeal on July 19, 1996. On October 2, 1996, the California Supreme Court denied JORDAN's petition for review.

Respondent notes that prior to institution of dismissal proceedings, JORDAN had also previously challenged the disciplinary suspensions in federal court. Based on the same set of operative facts as the instant matter, the court dismissed JORDAN's constitutional and civil rights claims challenging his pre-dismissal disciplinary suspensions, both as to their procedural and substantive validity. On November 22, 1993, the federal court granted DISTRICT's motion to dismiss, concluding that "Plaintiff's First Amendment Claim is Meritless" and that he had failed to state a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*

Additionally, subsequent to his dismissal, JORDAN filed a civil action based on the identical set of operative facts. On December 31, 1996, summary judgment was granted in favor of Respondent DISTRICT based on principles of collateral estoppel and *res judicata* arising from both the state Court of Appeal decision upholding JORDAN's dismissal and the prior federal court ruling granting the motion to dismiss. *See* Superior Court decision in Appendix.

In yet another related case, JORDAN has unsuccessfully sued the DISTRICT's attorneys for claims based on his dismissal proceedings, again *on the same set of operative facts* as the case at bar.[3] JORDAN's civil complaint filed in Superior Court, dated February 2, 1996, was held to be subject to demurrer without leave to amend.

III. STATEMENT OF FACTS

Appellant JORDAN was initially employed by DISTRICT in Fall 1989. Prior to his dismissal, JORDAN was a full-time instructor. After making the acquaintance of another faculty employee, Janene Frahm, JORDAN was informed by both Ms. Frahm, and subsequently by DISTRICT, to cease any contact with Ms. Frahm. Despite this knowledge, JORDAN proceeded to continue contacting Ms. Frahm and to seek identifying information about her.

---

[3] JORDAN asserted the following causes of action: (1) Deceit; (2) Negligent Misrepresentation of Fact; (3) Malicious Institution of Civil Proceeding; and (4) Malicious Instigation of Administrative Proceedings.

JORDAN admitted on the Administrative Record that he had indeed engaged in the unwanted conduct for which he had been disciplined and ultimately terminated.

DISTRICT determined that Ms. Frahm's allegations of sexual harassment were credible and required remedial action; therefore, pursuant to its authority under the applicable collective bargaining agreement, it instituted progressive discipline. Despite specific and repeated written warnings to JORDAN over a four-year period that he was violating the agreement's discrimination and harassment provisions, JORDAN refused to cease contacting Ms. Frahm, and his progressive discipline eventually resulted in an action for dismissal.

JORDAN was served on September 8, 1994 with a Notice of Decision To Dismiss, which included the Statement of Decision To Dismiss, the Declaration of Dr. James Middleton regarding the Statement of Decision To Dismiss, the Recommendation for Statement of Decision To Dismiss, the Statement of Charges, the Resolution of Dismissal, a Notice of Objection form, copies of required sections from the Education and Government Codes, a copy of Board Policy 5.0004 and Education Code §§ 200, *et seq.*, a copy of the collective bargaining agreement, and a copy of JORDAN's March 1993 evaluation.

JORDAN then filed his signed Notice of Objection to Decision, dated September 21, 1994, and also submitted a four-page Notice of Objection and Demand for Hearing in which he responded to each charge.

Despite receiving his dismissal notice, JORDAN nevertheless subsequently sent an empty envelope marked "Do not forward" to Frahm in order to ascertain her

home address. DISTRICT then filed and served an Amended Statement of Decision on November 23, 1994 to include the charge that after receiving the initial dismissal documents, JORDAN again had contacted Frahm.

At the request of JORDAN and as authorized by Education Code § 87678, the matter was referred to the California Office of Administrative Hearings.

A hearing was set and held on February 22 and 23, 1995 in the City of San Rafael, California.

The hearing proceeded and the record was left open for the submission of closing briefs. After conclusion of the hearing, JORDAN requested permission to submit additional evidence into the record, to which DISTRICT lodged an objection. A determination to deny JORDAN's request was made on that issue by the administrative law judge on April 17, 1995. The administrative law judge then issued his final determination on the amended charges on June 7, 1995, finding that cause existed for dismissal of JORDAN.

In conjunction with JORDAN's initial action to overturn the dismissal, JORDAN sought action to stay implementation of the administrative law judge's decision. An order denying the Motion To Stay was issued on August 16, 1995. JORDAN then appealed the trial court's order upholding the administrative law judge's decision supporting JORDAN's dismissal from his teaching position.

IV. OBJECTIONS TO MISSTATEMENTS IN PETITION

Respondent herein identifies misstatements in the instant Petition and lodges a general objection to each

question presented in that Petitioner raises issues more properly to be matters of California law which do not implicate federal statutes or the Constitution:

> (1) Question No. 3 in terms of a purported communication to the press by the college president was never challenged in the dismissal proceedings below.
>
> (2) Questions Nos. 6, 7 and 14 are inaccurate in that Petitioner received copies of all relevant documents related to his dismissal.
>
> (3) Question No. 11 is inaccurate in that Petitioner was not dismissed for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, or for Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*

V. ARGUMENT

A. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED GIVEN THAT IT FAILS TO RAISE COMPELLING ISSUES OF FEDERAL LAW AND IT DOES NOT IDENTIFY ANY CONFLICT WITH DECISIONS BY OTHER COURTS.

1. Petitioner Fails To Identify Any California Statute Repugnant to the Constitution or Law of the United States.

28 U.S.C. § 1257(a) provides for Supreme Court jurisdiction by writ of certiorari over final judgments rendered by the highest court of a state where, *inter alia*, "the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States. . . . "

Supreme Court Rule 10 provides considerations governing review on certiorari:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . .
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The instant Petition does not (1) decide any important constitutional questions; (2) interpret any federal statutes; or (3) require resolution for the purpose of maintaining harmony among the decisions of the Circuit Court of Appeals or with state court interpretations of federal questions.

Here Petitioner has failed to identify any California statute which is constitutionally infirm or otherwise

unlawful. In essence, JORDAN's allegations simply assert that Respondent, the administrative law judge, the Superior Court and the Court of Appeal *misapplied* otherwise valid state statutes.

Moreover, there is no substantial claim that federal law would require a result different from that reached by the state courts. Further, here the state court decision does not involve an important federal question showing a conflict with this Court's prior decisions, a federal court of appeals, or the highest court of another state.

Therefore, Petitioner's writ seeking review by the Supreme Court should be denied.

2. Petitioner Fails To Identify Any Conflict with Any Prior Decision of This Court or Any Unsettled Areas of the Law.

Petitioner has not cited any authority showing that the administrative law judge, the state Superior Court, or the state Court of Appeal made any decision conflicting with prior decisions of this Court. Any allegation as to infringement of JORDAN's rights is fatally defective given well-settled constitutional principles. His continued attempt to vindicate his rights throughout the California and federal courts have been unavailing because his procedural and substantive rights have been safeguarded through the administrative hearing and judicial review. The state Court of Appeal recognized that JORDAN had received a hearing consistent with statutory and constitutional principles. Petitioner fails to show that the Court of Appeal decision is inconsistent with established legal principles or case law. Therefore, no grounds

based upon a conflict in decisions or an unsettled area of the law exist for granting the Petition.

3. The Facts Presented Are Unique to Petitioner and Fail To Implicate Any Principles of General Application.

JORDAN's Petition relies on facts unique to Petitioner. There are no identifiable principles of general application which potentially affect other litigants. Petitioner has been afforded numerous opportunities in administrative and judicial fora to vindicate his alleged rights. JORDAN's arguments, reiterated in his Petition, have heretofore been consistently rejected upon judicial review.

B. THERE ARE NO GROUNDS RAISED IN THE PETITION WHICH ARE APPROPRIATE FOR REVIEW BY THE SUPREME COURT.

This Brief in Opposition does not purport to address the merits of Petitioner's arguments; rather, its foci are limited to the narrow question of whether certiorari should be granted. It is Respondent's view that for the following reasons the instant Petition fails to satisfy the prerequisites for granting certiorari.

Here JORDAN simply repeats his legal challenge to his discipline and ultimate dismissal in his arguments to Superior Court, to the Court of Appeal, to the California Supreme Court, and now again to this Court. Each and every court to date has rejected JORDAN's assertions that the substantive basis for his discipline, and ultimate dismissal, were

in any way infirm. The substance of each and every allegation raised by JORDAN in his Petition for Writ of Certiorari has been heard, and rejected by the administrative law judge, by a California Superior Court on a mandamus petition, by the Court of Appeal, by the California Supreme Court, by a federal court, and most recently by another state Superior Court in his civil suit.

JORDAN elected to challenge the administrative law judge's decision upholding DISTRICT's termination decision. Ultimately, the Court of Appeal affirmed the lower court's order denying JORDAN's petition for writ of mandate, finding sufficient evidence to support Petitioner's dismissal and no lapse of due process. *See* Appendix. The Court found that substantial evidence supported the finding that JORDAN had engaged in sexual harassment, persistently refused to obey rules proscribing such conduct, and was unfit for service as an instructor. As noted by the Court,

> Jordan explained that he believed his constitutional right of free expression entitled him to contact Frahm and that his repetitive contacts allowed him to challenge the District's position that it could demand him to end those contacts. Jordan testified that Frahm was "a means to an end," the end being to establish his constitutional right of free expression.

Appellate Opinion, App. 9.

> The administrative law judge found Jordan's constitutional explanation for his conduct toward Frahm "unpersuasive," since Jordan had been pursuing judicial redress for the perceived violation of his right of free expression and had no need to continue contacting her to preserve

> that action. He found that Jordan's "obsessive conduct defies logic" and constituted sexual harassment by creating an intimidating work environment. The administrative law judge also found that Jordan's conduct demonstrated persistent refusal to obey governing laws and regulations and unfitness for service.
>
> These findings are supported by the weight of the evidence, as described in detail above. . . . Appellate Opinion, App. 9.

The Court of Appeal, in its carefully crafted opinion, also disposed of JORDAN's complaint of lack of a performance evaluation by concluding that JORDAN had not explained the presence of the 1993 evaluation as evidence in the administrative hearing and that in any event his "teaching competency was irrelevant to the board's resolution, which dismissed him for unfitness for service and persistent violation of rules because of his sexual harassment of Frahm." Appellate Opinion, App. 12-13.

JORDAN further alleged a consistent breach by Respondent of its procedural due process obligations. Of import to the instant Petition is the Court of Appeal's rejection of Petitioner's allegations of due process infringement:

> The District received recurrent complaints of harassment from Frahm and urged Jordan on four separate occasions from spring 1990 to August 1993 to stop his unwelcome communications, and escalated the penalty for noncompliance from censure to increasing periods of suspension. [Footnote.] Jordan remained intransigent, and the District's governing board resolved to dismiss him on September 8, 1994

> upon the superintendent's recommendation following yet another complaint of harassment from Frahm.
>
> Jordan received prompt notification of the decision to dismiss him, including a detailed statement of charges, advisement of his right to object, and a copy of relevant statutes. [Citation omitted.] Jordan is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon. The District's statement of charges fully described Jordan's harassment. . . . "

Appellate Opinion, App. 12-[illegible].

JORDAN also challenged the procedural vehicle which DISTRICT had initially used in disciplining him for sexual harassment. However, the Court of Appeal also disposed of this issue, as explained in the Opinion at App. 11, n.3:

> Jordan had challenged the suspensions as violative of certain Education Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. *But the suspensions were not found invalid and, in any event, any procedural errors attending the suspensions did not less their effect in notifying Jordan of the inappropriateness of his conduct.* [Emphasis added.]

In sum, the Court of Appeal found no merit in JORDAN's alleged deprivation of procedural rights and protections:

"We are satisfied that due process was afforded Jordan." Opinion, App. 11.

Therefore, JORDAN's allegations as to procedural due process violations and tort allegations regarding his discipline and ultimate dismissal have been fully litigated in several fora. This result was recognized by the Superior Court when it granted summary judgment in Petitioner's civil suit based on the principles of collateral estoppel and *res judicata*. *See* App. 17.

VI. CONCLUSION

Upon the reasons as set forth above, Respondent THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT respectfully urges that this Petition for Writ of Certiorari be denied.

Dated: February 17, 1997

Respectfully submitted,

SCHOOL AND COLLEGE LEGAL SERVICES

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APPENDIX

California Education Code §87731:

> No regular employee shall be dismissed except for one or more of the following causes:
>
> . . .
>
> (d) Evident unfitness for service.
>
> . . .
>
> (f) Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.
>
> . . .

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

LAWRENCE WM. JORDAN,

Plaintiff and Appellant

v.

THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT,

Defendant and Respondent.

A072322

(Marin County Super.Ct.No. 164356)

Lawrence W. Jordan was dismissed from his faculty position with the College of Marin (College) by the Marin Community College District (District) because his sexual harassment of a fellow instructor constituted unfitness for service and demonstrated a persistent refusal to obey laws and regulations proscribing harassment. (Ed.Code, § 87732, subds. (e) and (g) [now, subds. (d) and (f)].)[1] The District's decision was upheld by Administrative Law Judge Stewart A. Judson, after a full hearing on the matter. Jordan petitioned for a writ of mandate to compel reversal of the decision and the superior court denied the petition after reviewing the administrative record. On appeal, we affirm the lower court's order denying the

[1] All further statutory references are to the Education Code, unless otherwise indicated.

petition, finding sufficient evidence to support Jordan's dismissal and no lapse of due process.

I. DISCUSSION

Our review of the trial court's denial of Jordan's petition for administrative mandate is limited to determining whether substantial evidence supports the trial court's findings, which it reached through its independent review of the evidence admitted at the administrative hearing. (*O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610, 1620; § 87682.) As a preliminary matter, Jordan denies that the trial court ever made an independent review of the administrative hearing evidence. But the trial court expressly stated that it reviewed all documents submitted to it, including the administrative record, and exercised its "independent judgment" in finding the evidence sufficient to support Jordan's dismissal. The trial court did not itself articulate specific findings but it effectively adopted the findings of the administrative law judge which, we too, find to be supported by the evidence.

A. Substantial Evidence Supports the Finding That Jordan Engaged in Sexual Harassment, Persistently Refused to Obey Rules Proscribing Such Conduct, and was Unfit for Service as an Instructor.

California prohibits sexual harassment in employment and educational institutions, declaring it a form of sexual discrimination. (§§ 200, 212.5, 212.6, 230, subd. (d); Gov.Code, § 12940, subd. (h)(1).) Federal law also forbids

sexual harassment. (42 U.S.C. § 2000e-2, subd. (a)(1); *Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 63-67.) The collective bargaining agreement between the District and its instructors likewise prohibits sexual harassment. Consistent with these legislative edicts and its union obligations, the District has an express policy prohibiting its employees from sexually harassing students or fellow employees, so as to prevent "an adverse or offensive working or academic environment." The administrative law judge found that Jordan sexually harassed Janene Frahm, a fellow employee, and that Jordan's conduct was "sufficiently severe or pervasive to create a hostile or offensive work environment for Frahm." The evidence supports that finding.

1. Evidence presented at the administrative hearing.

Jordan is a former lawyer and joinded the College faculty as an engineering and science instructor in 1989. Frahm is a speech communications instructor. She was a temporary, periodic employee of the College, and worked there during numerous semesters from 1981 to 1982 and 1986 to 1993, and had employee status through 1994.

Jordan and Frahm met in the fall of 1989 and dated once by attending an open house party together.[2] Soon after the party, Frahm wrote a note to Jordan saying she

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[2] As did the administrative law judge, we mention early events to provide a background while respecting the rule precluding reliance on "charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice." (§ 87680.)

did not want any further involvement with him. Jordan did not accept the rebuff but instead wrote to Frahm's alma mater in April 1990, attempting to get personal information about her. Frahm learned of the attempt and expressed her displeasure to Jordan. She also complained to the College of Jordan's behavior and the College asked him to leave Frahm alone.

Ignoring the request, Jordan sat in on a class Frahm was teaching in the summer of 1990, and asked the registrar about enrolling in the class. Jordan also mailed a Valentine's Day card to Frahm's post office box in February 1991, professing his love for her. Jordan further ignored Frahm's and the College's pleas that he not contact her by sending June birthday cards to her every year from 1991 to 1994. Frahm had never told Jordan her birthday, only that it was in the latter part of June, and had never given Jordan her mailing or home address.

The birthday messages began in July 1991, when Jordan sent a postcard of New Zealand caves to Frahm's post office box, mailed from California, with the handwritten greeting "Belated Happy Birthday. Hope you find who/what you want in life." Frahm was upset to receive the unwelcome contact and informed the College. The College formally censured Jordan for sexual harassment and warned him that further communications with Frahm would be punished with suspension from teaching. Frahm's sexual harassment complaints were reported in local newspapers in October 1991 when Jordan was running for the College Board of Trustees.

Jordan sued the College over its disciplinary finding and wrote to Frahm in January 1991, asking her to contact

him to arrange her deposition. Jordan mailed letters both to Frahm's post office box and to her street address. Frahm was "scared" and "extremely upset" to realize that Jordan had "somehow tracked down" her home address. She cried and shook upon receiving Jordan's letter at home, and worried about how he obtained the information and whether he had learned other personal information about her. She "felt stalked" and "harassed," and was concerned about her "safety and well being." She asked the College teachers' union for help.

In June 1992, Jordan mailed a postcard to Frahm's home address, depicting a bob cat and inscribed "happy birthday." Frahm was upset at receiving another unwelcome communication from Jordan and notified the College. The College suspended Jordan without pay for four days, and warned him that further harassment of Frahm would result in a longer suspension.

In June 1993, Jordan mailed a birthday card to Frahm's home address. The card shows a smiling person and reads "Whatever makes you smile most . . . is what I hope you'll do today. Happy Birthday!" As with the other cards, it was signed "Larry." Frahm was "angry," "upset," "scared" and "worried" by Jordan's recurrent contacts at her undisclosed home address. She felt it "very spooky" that Jordan "was out there tracking down information about [her]." Frahm again notified the College and Jordan was again disciplined. This time, Jordan was suspended for 10 days without pay.

In December 1993, the College sought an injunction against Jordan and submitted Frahm's declaration attesting that she had altered her life because of Jordan's

unwanted contacts. She stated that she "ceased attending college sponsored functions because [she did] not want to be in the same room as him" and "had to be careful not to reveal information to third parties" because she feared Jordan would learn the information.

In June 1994, Jordan mailed yet another birthday card to Frahm's home address. The card, posted in Utah, bears a "Love" postage stamp. It depicts seven images on the cover, including a rainbow, balloons, and hearts, each corresponding to the phrases "Success," "Love," "Joy," "Happiness," "Friendship," "Smiles," and "Health." The printed sentiment reads "Many wishes to you for a truly memorable year. Happy Birthday," and is inscribed "Thanks for your assistance. Larry." Frahm thought it a strange note and had no idea what "assistance" Jordan meant. Frahm was "sick and tired of unwanted contact from a person who has been told time and time again to leave [her] alone and [she] wanted it to end." She notified the College of the latest card from Jordan, and the District decided to dismiss Jordan upon its superintendent's recommendation. Jordan was notified of that decision on September 8, 1994.

Meanwhile, Frahm moved from her home where she had been receiving birthday cards from Jordan. Frahm believes that Jordan "somehow" found out about her move and tried to "track [her] down" and discover her new address. On September 13, 1994, he mailed an empty envelope to her previous address and marked it "DO NOT FORWARD. Address correction requested." Frahm sought, and obtained, a court order closing her voter registration records to prevent Jordan from learning her new address.

Frahm testified that she felt that her safety "is threatened now on a continual, regular basis." She characterized Jordan's conduct as sexual harassment and explained that it affected her work environment at the College. She was hesitant to attend faculty meetings at the College, and missed some, because Jordan would stare at her. In order to attend a two-day meeting in which Jordan was known to be participating, Frahm was accompanied the entire time by a male administrator who acted as a "body guard." While on campus, Frahm felt that she had to constantly look over her shoulder to make sure Jordan was not following her. She described an incident during the summer semester of 1993 when she jumped behind a tree and ran from car to car to avoid confronting Jordan who was walking nearby. Frahm also described Jordan's habit of walking past her open office door, even though his office was in another building across campus.

A College administrator testified that Jordan's conduct upset Frahm and made Frahm reluctant to come to campus. The administrator also said that Jordan's conduct was intimidating, hostile and disruptive of "the educational process." The District superintendent testified that the District felt an obligation to maintain a comfortable, open environment on campus and a legal responsibility to prevent sexual harassment. An expert on sexual harassment testified that sexual harassment is present if the harassment is based on the victim's gender, even if not provocatively sensual in nature. The expert also said that conduct outside the work place may constitute sexual harassment in employment if the offensive conduct is related or linked to the work place.

At the hearing, Jordan admitted acquiring Frahm's street address from voter registration records and making recurrent, unwelcome contacts to Frahm for four years, over the District's pleas to stop. He also admitted knowing, beginning in 1990, that Frahm was complaining about his conduct to the College and that, at least by 1991, she thought him "a pain in the butt." Jordan explained that he believed his constitutional right of free expression entitled him to contact Frahm and that his repetitive contacts allowed him to challenge the District's position that it could demand him to end those contacts. Jordan testified that Frahm was "a means to an end;" the end being to establish his constitutional right of free expression.

2. The evidence supports the findings of sexual harassment, persistent refusal to obey applicable rules, and unfitness for service.

The administrative law judge found Jordan's constitutional explanation for his conduct toward Frahm "unpersuasive," since Jordan had long been pursuing judicial redress for the perceived violation of his right of free expression and had no need to continue contacting her to preserve that action. He found that Jordan's "obsessive conduct defies logic" and constituted sexual harassment by creating an intimidating work environment. The administrative law judge also found that Jordan's conduct demonstrated persistent refusal to obey governing laws and regulations and unfitness for service.

These findings are supported by the weight of the evidence, as described in detail above. Jordan harassed

Frahm by a persistent refusal to respect her requests to be let alone, ferreting out her street address from government records and intruding into every birthday for four years with unwelcome cards. The harassment was sexual harassment, since Jordan initiated it when Frahm refused to date him again and inaugurated his communications with a Valentine's Day card professing his love for her. The first birthday card, too, bears an obvious reference to Frahm's rebuff with its stated wish that Frahm "find who/what you want in life." It is true that the birthday cards were facially innocent. But "[s]exual harassment does not necessarily involve sexual conduct. It need not have anything to do with lewd acts, double entendres or sexual advances." (*Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 345.) Clearly, Jordan does not behave similarly in commemorating the birthdays of his male colleagues. The administrative law judge rightly concluded that the obsessiveness and intrusiveness of Jordan's fixation on this birthday card campaign reasonably intimidated Frahm.

While the cards were not delivered at the work place, there was sufficient evidence that Jordan's conduct in staring at Frahm at faculty meetings and roving past her office extended to the campus and the entire "concerted pattern" of his conduct created an offensive work environment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610.) Jordan's conduct is not absolved by the fact that he did not limit his activities to campus. A work place sexual harasser's wrongful conduct is not mitigated by encroachments into the victim's private life.

Finally, Jordan's claim that the District is without authority to discipline sexual harassment is plainly

wrong. An employer apprised of sexual harassment among its employees must "take immediate and appropriate corrective action," and "all reasonable steps to prevent harassment from occurring." (Gov.Code § 12940, subd. (h)(1).) Jordan ignored the District's numerous directives to stop his harassing conduct, thus establishing a persistent refusal to obey applicable laws and regulations. (§ 87732, subd. (g) [now, subd. (f)].) Jordan's obstinate and offensive conduct also evidenced unfitness for service. (§ 87732, subd. (e) [now subd. d]; see *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 [factors generally relevant to unfitness].)

B. There was No Deprivation of Due Process.

In addition to challenging the sufficiency of the evidence supporting his dismissal, Jordan also claims he was denied various procedural rights and protections. We are satisfied that due process was afforded Jordan.

1. Notification of dismissal decision.

The District received recurrent complaints of harassment from Frahm and urged Jordan on four separate occasions from spring 1990 to August 1993 to stop his unwelcome communications, and escalated the penalty for noncompliance from censure to increasing periods of suspension.[3] Jordan remained intransigent, and the

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[3] Jordan had challenged the suspensions as violative of certain Education Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. But the suspensions were not found invalid and, in any event, any

District's governing board resolved to dismiss him on September 8, 1994, upon the superintendent's recommendation following yet another complaint of harassment from Frahm.

Jordan received prompt notification of the decision to dismiss him, including a detailed statement of charges, advisement of his right to object, and a copy of relevant statutes. (§ 87672.) Jordan is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon. The District's statement of charges fully described Jordan's harassment of Frahm and explained that his conduct constituted "evident unfitness for service" and "persistent violation of or refusal to obey" school laws of the state and District board regulations, both of which provide grounds for dismissing tenured faculty. (§ 87732, subs. (e) and (g) [now subds. (d) and (f)].)

2. Performance evaluation.

Jordan complains that the District board dismissed him without first evaluating his teaching competency. It is true that the Education Code provides for dismissal upon satisfaction of certain grounds, including the District's board's consideration of a performance evaluation. (§ 87671.) However, it is not clear that the board

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procedural errors attending the suspensions did not lessen their effect in notifying Jordan of the inappropriateness of his conduct.

neglected to consider an evaluation of Jordan's performance. A February 1993 performance evaluation was presented with other documents at the administrative hearing to establish that the District proceeded lawfully, so it may be that the evaluation was presented to the District board before it resolved to dismiss Jordan. Jordan has not proven to the contrary on appeal, and has failed to explain the presence of the evaluation in the record. In any event, Jordan's teaching competency was irrelevant to the board's resolution, which dismissed him for unfitness for service and persistent violation of rules because of his sexual harassment of Frahm.

3. Notification of administrative hearing.

The District honored Jordan's request for an administrative hearing to dispute his dismissal and advised him in November 1994 that a hearing was set for February 21-23, 1995 in San Rafael. The District personally served Jordan with a second notice on February 16, 1995, changing the hearing location to a different San Rafael office. Jordan argues that notice was inadequate because administrative procedures require that all parties receive notice of the hearing "at least 10 days prior to the hearing." (Gov.Code § 11509.) The argument fails because Jordan received the original notice almost three months before the hearing and the amended notice served five days before the hearing changed only the location of the hearing within San Rafael.

While administrative procedures mandate at least 10 days advance notice of the hearing to apprise all parties of the date, time, place, and nature of the proceedings, it

is not clear that a minor change in the place of the hearing requires an equivalent period of advance notice. (Gov.Code § 11509.) We have held that a continuance of an administrative hearing to be held in a different city does not require satisfaction of the statutory notification standard, and found it sufficient that the interested party was informed at an administrative board meeting in Los Angeles that the matter was continued until a later Sacramento board meeting and had actual knowledge of the precise date at least three days before the hearing. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d 709, 711-712, 715.) Here, Jordan was formally notified of the date, time, place and nature of the administrative hearing well in advance and only the place was changed shortly before the hearing. The change in location was minor, from one office to another within the same city, and Jordan had actual knowledge of the change five days before the hearing. Jordan appeared at the hearing and made no claim there, or here, that he suffered any prejudice by the change of location. On these facts, we find no deprivation of due process or the intended protections of the administrative rule.

4. Discovery.

Finally, Jordan says he was denied discovery opportunities. California community college employees in administrative proceedings have discovery "rights and duties" equivalent to civil action litigants in addition to discovery rights granted under administrative procedures. (§ 87679; Gov.Code § 11507.6.) Jordan availed himself of his civil discovery rights by propounding interrogatories, a request for admissions and a request for

production of documents by mail service on December 24, 1994. Second requests for production of documents and admissions were served by mail on January 5, 1995. A response to the first request for production of documents was due January 18, 1995, a response to the second request for admissions was due February 9, 1995, and the other three discovery responses were due January 30, 1995. (Code Civ.Proc. §§ 1013, subd. (a), 2030, subd. (h), 2031, subd. (h), 2033, subd. (h).)

Jordan also requested discovery under administrative procedures on December 24, 1994. (Gov.Code § 11507.6.) That request was untimely since it was not made within 30 days after service of the District's statement of charges mailed on September 8, 1994, nor within 15 days after service of the District's amended statements of charges mailed on November 23, 1994. (Gov.Code § 11507.6.) Accordingly, no response was due to that request for discovery.

On January 30, 1995, Jordan petitioned the superior court to compel the District to respond to all outstanding discovery requests.[4] Since only one of the five properly propounded discovery requests was due for response before January 30, 1995, Jordan's petition was largely premature. Also, Jordan made no attempt to resolve the discovery problem by conferring with the District, as local court rules encourage. (Marin County Superior Court Rules. Rule 3.14(A).) A discovery hearing was set for February 16, 1995. The District responded to all civil

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[4] Jordan failed to present his requests for admissions to the trial court when he petitioned to compel discovery responses. (Code Civ.Proc. § 2033.)

discovery requests before the hearing. Responses were mailed on February 10, 1995, and received by Jordan three days later. The District opposed Jordan's effort to compel discovery or impose sanctions, explaining that it had failed to respond earlier because it's [sic] counsel had not realized that community college employees were entitled to civil discovery in addition to administrative discovery. The trial court found that the District fully complied with its discovery obligations by the time of the hearing.

The trial court's resolution of the discovery dispute was proper. The court was entitled to excuse the District's belated discovery responses and the delay in response worked no prejudice upon Jordan. He received the District's responses sufficiently in advance of the administrative hearing, and discovery was completed "prior to one week before the date set for hearing." (§ 87679.) Jordan was given all due process.

II. DISPOSITION

The order denying a petition for writ of administrative mandate is affirmed.

Strankman, P.J.

We concur:

Dossee, J.

Swager, J.

MARIN COUNTY COURTS

DATE: 12/31/96 TIME: 9:00 A.M.
DEPT. NO. 7 CASE NO. 166230

PRESENT: HON. LYNN DURYEE, JUDGE

REPORTER: DEBBIE BARTUNEK CLERK: LOUISE MORRIS

PLAINTIFF: LAWRENCE WM. JORDAN COUNSEL:

vs.

DEFENDANT: MARIN COMMUNITY COLLEGE DISTRICT GOVERNING BOARD

NATURE OF PROCEEDINGS: MOTION FOR SUMMARY JUDGMENT

RULING

Defendants' [sic] moving papers failed to provide an evidence document with an index to exhibits in violation of Marin County Rule 3.13(S)(2)(a)-(e), for which a $49.00 sanction is hereby imposed, payable to the Clerk of the Court within five days of the hearing date.

Defendants' [sic] unopposed request for judicial notice of the seven items listed is granted. The parties are also advised that the Court intends to take judical notice pursuant to Evidence Code §§ 455 and452, of the pleadings (Second Amended Petition for Writ of Mandate) in Marin No. 164356.

Defendants' [sic] Motion for Summary Judgment is GRANTED. The Court has reviewed and considered all of

the evidence presented, including those matters identified for purposes of judicial notice, and finds that all of Plaintiff's causes of action in the operative Second Amended Complaint are barred by the principles of *res judicata* and *collateral estoppel*. (See *Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893; *Swartzendruber v. City of San Diego* (1992) 3 Cal.App.4th 896[,] see also *Takahashi v. Board of Trustees of Livingston* (9th Circ. 1986) 783 F.2d 848 and *Miller v. County of Santa Cruz* (9th Cir. 1994) 39 F.3d 1030) The primary right at stake in the prior administrative mandamus action (Marin No. 164356) was plaintiff's right to employment; the prior federal action challenged the impropriety of District's disciplinary action; both actions were decided adversely to Plaintiff. The Court of Appeals decision concerning Plaintiff's termination clearly addressed the claims made here. Plaintiff has merely re-cast his allegations concerning the impropriety of Defendants' [sic] conduct with regard to his discipline and ultimate dismissal under the guise of different "theories" (e.g. conspiracy, fraud, deceit, infliction of emotional distress, etc.).